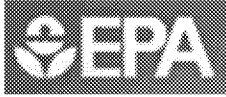


From: Vocus Subscriber [pradmin@vocus.com]
Sent: 8/31/2021 10:02:05 AM
To: Seneca, Roy [Seneca.Roy@epa.gov]
Subject: EPA Region 3 Headlines



EPA Region 3 Headlines

Headline	Date	Outlet	Links
DC (32)			
» 'Forever chemicals' contamination at Defense Department sites threatens Great Lakes fish, residents	08/31/2021	Environmental Working Group	Text View Clip
... No national standard exists for testing fish for PFAS. But the Environmental Protection Agency, collaborating with the...			
» Court tosses Trump water pollution rule but still weighing restoration of Obama rule	08/31/2021	Hill Online, The	Text View Clip
...from pollution. Márquez remanded the rule for reconsideration to the Environmental Protection Agency (EPA) and the U.S....			
» EWG water atlas reveals nitrate, phosphorous water pollution in four Upper Mississippi Basin states closely aligns with fertilizer use on cropland	08/31/2021	Environmental Working Group	Text View Clip
...Wisconsin have established numeric criteria for phosphorus, which are EPA-approved standards meant to protect water resources from...			
» Federal judge throws out Trump administration rule allowing the draining and filling of streams	08/31/2021	Democratic Underground	Text View Clip
...merit one under the Trump standards. We are reviewing the ruling, said Environmental Protection Agency spokesman Nick...			
» Leaded Gasoline Is Officially A Thing Of The Past	08/31/2021	Zenger News	Text View Clip
...phase-out of lead in gasoline began in the 1980s. "As a result of the EPA's regulatory efforts, including the removal of lead from...			
» Overnight Energy & Environment - Presented by the American Petroleum Institute - Feds target illegal gas practices	08/31/2021	Hill Online, The	Text View Clip
...emissions in that sector as "low-hanging fruit." According to the EPA, methane is 25 times more potent than carbon dioxide when...			
» Some U.S. hotels are starting to require proof of vaccination for guests and staff	08/31/2021	EIN News	Text View Clip
...between Arsenal and Chelsea in London last Sunday.Credit...Neil Hall/EPA, via Shutterstock LONDON - Nearly 60,000 soccer fans...			

»»	The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile	08/31/2021	WAMU-FM Online	Text	View Clip
	...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...				
»»	Thousands face weeks without power in Ida's aftermath	08/31/2021	Federal News Network Online	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»»	Thousands Face Weeks Without Power in Ida's Aftermath	08/31/2021	U.S. News & World Report	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»»	Thousands face weeks without power in Ida's aftermath	08/31/2021	SRNNews.com	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»»	Trump waters rule vacated by federal judge	08/31/2021	Agri-Pulse	Text	View Clip
	...the arid Southwest. Last month, a federal judge in South Carolina granted EPA and the Corps' request to reconsider the rule without...				
»»	U.S. judge vacates Trump water rule on environmental grounds	08/31/2021	SRNNews.com	Text	View Clip
	...the Trump administration's Navigable Waters rule in place while the Biden Environmental Protection Agency and Army Corps of...				
»»	UN hails end of poisonous lead gas use in cars worldwide	08/31/2021	Federal News Network Online	Text	View Clip
	...prevented by the ban. Janet McCabe, deputy administrator of the U.S. Environmental Protection Agency, said measurements...				
»»	Committee Raises Alarm Over Toxic Pollution From New Tanneries' Hub	08/30/2021	Radio Free Asia	Text	View Clip
	...the estate?" Chowdhury said. 'They did it to save money' Jiangsu Lingzhi Environmental Protection Co. Ltd is the Chinese firm that...				
»»	Common Air Pollutants Can Increase Risk Of Cardiac Arrest: Study	08/30/2021	Zenger News	Text	View Clip
	...ozone across the study territory was provided by the regional agency for environmental protection (ARPA). The authors calculated...				
»»	Commonly-Used Pesticide Could Be Partly Responsible For Obesity Crisis: Study	08/30/2021	Zenger News	Text	View Clip
	...is banned in Canada, imported produce may still be treated with it. The Environmental Protection Agency recently announced...				
»»	Commonly-Used Pesticide Could Be Partly Responsible For Obesity Crisis: Study	08/30/2021	Washington Informer Online, The	Text	View Clip
	...is banned in Canada, imported produce may still be treated with it. The Environmental Protection Agency recently announced...				
»»	Daily on Energy: New Orleans electricity transmission failure raises debate about grid resilience	08/30/2021	Washington Examiner Online	Text	View Clip
	...3:30 p.m. Resources for the Future will host a webinar conversation with EPA Administrator Michael Regan to discuss the role of...				

»	Director of HR Discusses the Importance of Emotional Intelligence and His Path to an ESG Role at a REIT	08/30/2021	REIT	Text	View Clip
	...care of the environment. At the beginning of my career, I worked at the Environmental Protection Agency. Through that...				
»	Escaping Fake Agile 2.0 - GovLoop	08/30/2021	GovLoop	Text	View Clip
	...the Chief Technology Officer (CTO) and U.S. Digital Services Lead at the Environmental Protection Agency (EPA). He has...				
»	focus needs to shift to preventing cr...	08/30/2021	EIN News	Text	View Clip
	...Displaced children in Cabo Delgado, Mozambique, learn under a tree. EFE-EPA/Joao Relvas Overall, the tactics I've outlined call for...				
»	Food and Beverage Disinfection Market Size, Opportunities, Key Growth Factors, Revenue Analysis, For 2026	08/30/2021	EIN News	Text	View Clip
	...• Disinfecting chemicals or sanitizers are registered as pesticides in U.S Environmental Protection Agency (EPA). The...				
»	Ikea plots resale for US stores	08/30/2021	Retail Dive	Text	View Clip
	...chairs and mattresses ended up in a landfill in 2018, according to the Environmental Protection Agency. The idea is also...				
»	Justice Department and EPA Reach Clean Air Act Settlement with Gear Box Z for Selling Defeat Devices	08/30/2021	Community Oriented Policing Services (COPS)	Text	View Clip
	... FOR IMMEDIATE RELEASE Monday, August 30, 2021 Justice Department and EPA Reach Clean Air Act Settlement with Gear Box Z for...				
»	Pritzker changes ethics bill, vetoes ambulance bill	08/30/2021	Washington Examiner Online	Text	View Clip
	... Effective: Immediately Bill Number: SB 1920 Description: Amends the Environmental Protection Act to add public disclosure...				
»	The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile	08/30/2021	NPR/National Public Radio Online	Text	View Clip
	...the gasoline in the world had lead added to it. In the United States, the Environmental Protection Agency started an effort to...				
»	UN praises 'official end' of leaded gasoline in cars after Algeria halts sales	08/30/2021	Hill Online, The	Text	View Clip
	...former head of motor vehicle pollution control programs for the U.S. Environmental Protection Agency, praised the development...				
»	Woman who was vegetarian for 33 years now meat's biggest champion	08/30/2021	Hill Online, The	Text	View Clip
	...joy that has brought me." READ MORE STORIES FROM CHANGING AMERICA EPA ORDERS CONTROVERSIAL OIL REFINERY TO SHUT DOWN AFTER...				
»	Daily on Energy: How Exxon is looking to shore up policy push for carbon pricing	08/27/2021	Washington Examiner	Text	
	...A fledgling natural gas exporter has become a meme stock Reuters EPA recommends lowering 2020 biofuel mandates retroactively ...				
»	Proving the theory that race isnâ€™t critical	08/26/2021	Washington Examiner	Text	
	...to reopen parkland access to Mobile Bay while protecting new acreage for environmental protection, to move the cityâ€™s commercial air hub...				

- » **Sununu signs PFAS water protection bills for New Hampshire** 08/26/2021 *Washington Examiner* [Text](#)
- ...kidney cancer to high cholesterol and problems in pregnancies. The U.S. Environmental Protection Agency has classified the compounds as...

DE (1)

- » **The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile** 08/30/2021 *WDDE-FM Online* [Text](#) [View Clip](#)
- ...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...

MD (20)

- » **ACE Unveils Never before Demonstrated Hybrid Flex Fuel Vehicle Project at Conference – Advanced BioFuels USA** 08/31/2021 *Advanced BioFuels USA* [Text](#) [View Clip](#)
- ...up to E85 matched to an electric motor for a combined 188 horsepower. "EPA assigns vehicles a carbon intensity (CI) score based on...
- » **Baltimore's two wastewater treatment plants dumped high sewage levels in rivers, inspections found** 08/31/2021 *Capital Gazette Online* [Text](#) [View Clip](#)
- ...Bay, a pact between the states whose waterways reach the bay and the U.S. Environmental Protection Agency that outlines...
- » **EPA Seeks Remand Of Trump-Era RFS Waivers, Opening Door To New Policy – Advanced BioFuels USA** 08/31/2021 *Advanced BioFuels USA* [Text](#) [View Clip](#)
- (Inside EPA) EPA is asking a federal appeals court to voluntarily remand Trump-era decisions that granted 31 small refinery...
- » **The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile** 08/31/2021 *Delmarva Public Radio WSCL/WSDL Online* [Text](#) [View Clip](#)
- ...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...
- » **The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile** 08/31/2021 *WYPR-FM Online* [Text](#) [View Clip](#)
- ...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...
- » **Thousands face weeks without power in Ida's aftermath** 08/31/2021 *WBOC-TV Online* [Text](#) [View Clip](#)
- ...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...
- » **Thousands face weeks without power in Ida's aftermath** 08/31/2021 *WTOP-FM Online* [Text](#) [View Clip](#)
- ...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...
- » **\$13.2 Bn Geosynthetics (Geotextile, Geomembranes, Geogrids, Geofoams, Geonets) Markets - Global Forecast to 2026 - ResearchAndMarkets.com** 08/30/2021 *WBOC-TV Online* [Text](#) [View Clip](#)
- ...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...

➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	WBOC-TV Online	Text	View Clip
	...environments for all people with our cutting-edge technology, and our EPA registered and Green Seal® certified cleaners and...				
➤	Aptive Environmental Recognized as No. 10 on Utah Business' 2021	08/30/2021	WBOC-TV Online	Text	View Clip
	...Magazine's Best Companies in America. Aptive is also a proud member of the EPA's Pesticide Environmental Stewardship Program and has...				
➤	Do I need to drink filtered water or is tap OK?	08/30/2021	Star Democrat, The	Text	
	...safer than bottled water. The water supply in the U.S. is regulated by the Environmental Protection Agency under very strict guidelines...				
➤	Do I need to drink filtered water or is tap OK?	08/30/2021	Star Democrat Online, The	Text	View Clip
	...be? The reason is simple. The water supply in the U.S. is regulated by the Environmental Protection Agency under very strict...				
➤	GM's Awesome Duramax Turbo-Diesel Stops Production	08/30/2021	CarBuzz	Text	View Clip
	...it offered best-in-class 250 hp and 440 lb-ft of twist and returned an EPA-estimated 30 mpg highway rating. Buyers also benefit from...				
➤	Kia America Announces 2022 Niro EV	08/30/2021	WBOC-TV Online	Text	View Clip
	1 Based on EPA estimates on a full battery charge. Actual range will vary with options, driving conditions, driving habits, vehicle...				
➤	'Ready as we can be': FEMA, other agencies in place for Ida	08/30/2021	WBFF-TV - Online	Text	View Clip
	...in place in Louisiana and three more teams were in Alabama, FEMA said. Environmental Protection Agency spokeswoman Jennah...				
➤	Rec Water Solutions and Sigura Water Enter Into an Exclusive License Agreement	08/30/2021	WBOC-TV Online	Text	View Clip
	...and residential use. AlgaeShield, MetalShield and PristineBlue are EPA registered and NSF Certified to ANSI Standard 60. More...				
➤	The state of our bees	08/30/2021	Baltimore Jewish Times Online	Text	View Clip
	...their wares. However grim things may look now, Goembel said the Environmental Protection Agency is now taking more...				
➤	Trends in U.N. Climate Report Point to an Altered Chesapeake Bay	08/30/2021	Chestertown Spy, The	Text	View Clip
	...Chesapeake Executive Council, which includes the administrator of the U.S. Environmental Protection Agency, governors of...				
➤	UN hails end of poisonous leaded gas use in cars worldwide	08/30/2021	WBFF-TV - Online	Text	View Clip
	...prevented by the ban. Janet McCabe, deputy administrator of the U.S. Environmental Protection Agency, said measurements...				
➤	Anne Arundel County Chamber of Commerce to induct 4 into Business Hall of Fame	08/25/2021	Daily Record, The	Text	
	...Research for the Office of Research and Development at the U.S. Environmental Protection Agency. Beidle has served the citizens of...				

»	DEP will spray for mosquitoes in Haven and Cressona	08/31/2021	<i>Republican Herald Online</i>	Text	View Clip
	The Pennsylvania Department of Environmental Protection will be spraying Tuesday in Schuylkill Haven and Cressona.				
»	Eco (Atlantic) Oil and Gas Ltd. Announces Results for the Three Months Ended 30 June 2021	08/31/2021	<i>Ridgway Record</i>	Text	View Clip
	...update the market on further drilling plans later in Q3 2021.Posted by the Environmental Protection Agency ("EPA")...				
»	Eco (Atlantic) Oil and Gas Ltd. Announces Results for the Three Months Ended 30 June 2021	08/31/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...update the market on further drilling plans later in Q3 2021.Posted by the Environmental Protection Agency ("EPA")...				
»	Eco (Atlantic) Oil and Gas Ltd. Announces Results for the Three Months Ended 30 June 2021	08/31/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...update the market on further drilling plans later in Q3 2021.Posted by the Environmental Protection Agency ("EPA")...				
»	Eco (Atlantic) Oil and Gas Ltd. Announces Results for the Three Months Ended 30 June 2021	08/31/2021	<i>Daily Press, The</i>	Text	View Clip
	...update the market on further drilling plans later in Q3 2021.Posted by the Environmental Protection Agency ("EPA")...				
»	Federal judge strikes down Trump rule governing water pollution	08/31/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...Márquez wrote that the Trump water rule, which was jointly written by the Environmental Protection Agency and the Army Corps...				
»	Fortuna announces changes in management team	08/31/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...for our shareholders and stakeholders through efficient production, environmental protection, and social responsibility. For more...				
»	Fortuna announces changes in management team	08/31/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...for our shareholders and stakeholders through efficient production, environmental protection, and social responsibility. For more...				
»	Fortuna announces changes in management team	08/31/2021	<i>Ridgway Record</i>	Text	View Clip
	...for our shareholders and stakeholders through efficient production, environmental protection, and social responsibility. For more...				
»	Global Automotive Electric HVAC Compressor Market By Vehicle Type, By Drivetrain, By Cooling Capacity, By Regional Outlook, COVID-19 Impact Analysis Report and Forecast, 2021 - 2027	08/31/2021	<i>Ridgway Record</i>	Text	View Clip
	...fueled by the growing fuel costs along with the rising awareness regarding environmental protection, thereby augmenting the demand...				
»	Global Automotive Electric HVAC Compressor Market By Vehicle Type, By Drivetrain, By Cooling Capacity, By Regional Outlook, COVID-19 Impact Analysis Report and Forecast, 2021 - 2027	08/31/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...fueled by the growing fuel costs along with the rising awareness regarding environmental protection, thereby augmenting the demand...				

»	Global Automotive Electric HVAC Compressor Market By Vehicle Type, By Drivetrain, By Cooling Capacity, By Regional Outlook, COVID-19 Impact Analysis Report and Forecast, 2021 - 2027	08/31/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...fueled by the growing fuel costs along with the rising awareness regarding environmental protection, thereby augmenting the demand...				
»	Introduction of Africa Kalimba Thumb Piano 17 keyboards	08/31/2021	<i>Daily Press, The</i>	Text	View Clip
	...for optionalCertificateFSC,EN71,RohsMOQ1 PCPaintGlossy/Matte optional; All environmental protection Paint, No-toxic and...				
»	Reading will drain Bernhart Dam	08/31/2021	<i>Reading Eagle</i>	Text	
	...for Reading to find a solution to Bernhart Dam. The state Department of Environmental Protection designated it a high-risk dam and told...				
»	The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile	08/31/2021	<i>WESA-FM Online</i>	Text	View Clip
	...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>Titusville Herald</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>WFMZ-TV Online</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>Bradford Era Online, The</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>Daily Review, The</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>LNP Online/LancasterOnline.com</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>WBRE-TV Online</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
»	Thousands face weeks without power in Ida's aftermath	08/31/2021	<i>Centre Daily Times Online</i>	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				

➤	Thousands face weeks without power in Ida's aftermath	08/31/2021	WFXP-TV - Online	Text	View Clip
	...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...				
➤	UN hails end of poisonous leaded gas use in cars worldwide	08/31/2021	Centre Daily Times Online	Text	View Clip
	...prevented by the ban. Janet McCabe, deputy administrator of the U.S. Environmental Protection Agency, said measurements...				
➤	Zenith Energy Announces Significant Increase in Supply of Renewable Fuel for the Pacific Northwest	08/31/2021	Cerebral-Overload	Text	View Clip
	...in Houston, as well as core values, including Safety First and Environmental Protection. For more information, please visit...				
➤	\$13.2 Bn Geosynthetics (Geotextile, Geomembranes, Geogrids, Geofoams, Geonets) Markets - Global Forecast to 2026 - ResearchAndMarkets.com	08/30/2021	Ridgway Record	Text	View Clip
	...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...				
➤	\$13.2 Bn Geosynthetics (Geotextile, Geomembranes, Geogrids, Geofoams, Geonets) Markets - Global Forecast to 2026 - ResearchAndMarkets.com	08/30/2021	Pittsburgh Post-Gazette Online	Text	View Clip
	...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...				
➤	A day before Philly schools reopen, facilities woes take center stage	08/30/2021	WHYY News	Text	View Clip
	...rigorous style of testing. The district uses a standard approved by the EPA and OSHA called Phase Contrast Microscopy (PCM) testing,...				
➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	Kane Republican (US), The	Text	View Clip
	...environments for all people with our cutting-edge technology, and our EPA registered and Green Seal® certified cleaners and...				
➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	Ridgway Record	Text	View Clip
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➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	Pittsburgh Post-Gazette Online	Text	View Clip
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➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	Daily Press, The	Text	View Clip
	...environments for all people with our cutting-edge technology, and our EPA registered and Green Seal® certified cleaners and...				
➤	Annihilare Announces UNC Partnership for Technology Development	08/30/2021	Punxsutawney Spirit	Text	View Clip
	...environments for all people with our cutting-edge technology, and our EPA registered and Green Seal® certified cleaners and...				
➤	Apptive Environmental Recognized as No. 10 on Utah Business' 2021 "Fast 50" List	08/30/2021	Pittsburgh Post-Gazette Online	Text	View Clip
	...Magazine's Best Companies in America. Apptive is also a proud member of the EPA's Pesticide Environmental Stewardship Program and has...				

➤	Apptive Environmental Recognized as No. 10 on Utah Business' 2021 "Fast 50" List	08/30/2021	<i>Ridgway Record</i>	Text	View Clip
	...Magazine's Best Companies in America. Apptive is also a proud member of the EPA's Pesticide Environmental Stewardship Program and has...				
➤	Gilbane Building Company selected to build new elementary school in Andover	08/30/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...K-12 education facilities on occupied campuses, as well as expertise in environmental protection and remediation, the Gilbane team...				
➤	Gilbane Building Company selected to build new elementary school in Andover	08/30/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...K-12 education facilities on occupied campuses, as well as expertise in environmental protection and remediation, the Gilbane team...				
➤	Gilbane Building Company selected to build new elementary school in Andover	08/30/2021	<i>Ridgway Record</i>	Text	View Clip
	...K-12 education facilities on occupied campuses, as well as expertise in environmental protection and remediation, the Gilbane team...				
➤	Gilbane Building Company selected to build new elementary school in Andover	08/30/2021	<i>Kane Republican (US), The</i>	Text	View Clip
	...K-12 education facilities on occupied campuses, as well as expertise in environmental protection and remediation, the Gilbane team...				
➤	Global Geosynthetics Market Report 2021-2026: Rising Regulatory Standards & Developing Countries Will Boost the Future Growth	08/30/2021	<i>Ridgway Record</i>	Text	View Clip
	...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...				
➤	Global Geosynthetics Market Report 2021-2026: Rising Regulatory Standards & Developing Countries Will Boost the Future Growth	08/30/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip
	...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...				
➤	Global Geosynthetics Market Report 2021-2026: Rising Regulatory Standards & Developing Countries Will Boost the Future Growth	08/30/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...				
➤	Grants to protect coasts of Lake Erie now taking applications	08/30/2021	<i>WFXP-TV - Online</i>	Text	View Clip
	...of Planning wants to hear from you. The Pennsylvania Department of Environmental Protection's Coastal Resources Management Program...				
➤	How to Host a Sustainable Labor Day Gathering	08/30/2021	<i>Kane Republican (US), The</i>	Text	View Clip
	...currently makes up about 30% of the waste that's sent to landfills (EPA)? Composting your food scraps is an easy way to reduce...				
➤	How to Host a Sustainable Labor Day Gathering	08/30/2021	<i>Punxsutawney Spirit</i>	Text	View Clip
	...currently makes up about 30% of the waste that's sent to landfills (EPA)? Composting your food scraps is an easy way to reduce...				
➤	How to Host a Sustainable Labor Day Gathering	08/30/2021	<i>Pittsburgh Post-Gazette Online</i>	Text	View Clip

...currently makes up about 30% of the waste that's sent to landfills (EPA)? Composting your food scraps is an easy way to reduce...

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|---|--|------------|---------------------------------------|----------------------|---------------------------|
| » | How to Host a Sustainable Labor Day Gathering | 08/30/2021 | <i>Ridgway Record</i> | Text | View Clip |
| | ...currently makes up about 30% of the waste that's sent to landfills (EPA)? Composting your food scraps is an easy way to reduce... | | | | |
| » | How to Host a Sustainable Labor Day Gathering | 08/30/2021 | <i>Daily Press, The</i> | Text | View Clip |
| | ...currently makes up about 30% of the waste that's sent to landfills (EPA)? Composting your food scraps is an easy way to reduce... | | | | |
| » | Introduction of Africa Kalimba Thumb Piano 17 keyboards | 08/30/2021 | <i>Ridgway Record</i> | Text | View Clip |
| | ...for optionalCertificateFSC,EN71,RohsMOQ1 PCPaintGlossy/Matte optional; All environmental protection Paint, No-toxic and... | | | | |
| » | Introduction of Africa Kalimba Thumb Piano 17 keyboards | 08/30/2021 | <i>Pittsburgh Post-Gazette Online</i> | Text | View Clip |
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| | ...for optionalCertificateFSC,EN71,RohsMOQ1 PCPaintGlossy/Matte optional; All environmental protection Paint, No-toxic and... | | | | |
| » | Inventor buys former Titus Generating Station in Berks for \$200,000 | 08/30/2021 | <i>Reading Eagle</i> | Text | |
| | ...covenant, a deed restriction that gives the state Department of Environmental Protection oversight, was placed on the property. ... | | | | |
| » | Jefferson Co. Solid Waste Authority adjusts to new prices for collection | 08/30/2021 | <i>Courier-Express Online</i> | Text | View Clip |
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	...has obtained a remand without vacatur from two district courts of a Trump EPA rule that limited when states can require additional...				
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Daily on Energy: New Orleans electricity transmission failure raises debate about grid resilience | [View Clip](#)**08/30/2021****Washington Examiner Online**

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Director of HR Discusses the Importance of Emotional Intelligence and His Path to an ESG Role at a REIT | [View Clip](#)**08/30/2021****REIT**

...care of the environment. At the beginning of my career, I worked at the Environmental Protection Agency. Through that...

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Escaping Fake Agile 2.0 - GovLoop | [View Clip](#)**08/30/2021****GovLoop**

...the Chief Technology Officer (CTO) and U.S. Digital Services Lead at the Environmental Protection Agency (EPA). He has...

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focus needs to shift to preventing cr... | [View Clip](#)

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EIN News

... Displaced children in Cabo Delgado, Mozambique, learn under a tree. EFE-EPA/Joao Relvas Overall, the tactics I've outlined call for a...

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Food and Beverage Disinfection Market Size, Opportunities, Key Growth Factors, Revenue Analysis, For 2026 |

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EIN News

...• Disinfecting chemicals or sanitizers are registered as pesticides in U.S Environmental Protection Agency (EPA). The...

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Ikea plots resale for US stores | [View Clip](#)

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Retail Dive

...chairs and mattresses ended up in a landfill in 2018, according to the Environmental Protection Agency. The idea is also...

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Justice Department and EPA Reach Clean Air Act Settlement with Gear Box Z for Selling Defeat Devices | [View](#)

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Community Oriented Policing Services (COPS)

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Washington Examiner Online

... Effective: Immediately Bill Number: SB 1920 Description: Amends the Environmental Protection Act to add public disclosure...

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The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile | [View Clip](#)

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...the gasoline in the world had lead added to it. In the United States, the Environmental Protection Agency started an effort to...

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UN praises 'official end' of leaded gasoline in cars after Algeria halts sales | [View Clip](#)

08/30/2021

Hill Online, The

...former head of motor vehicle pollution control programs for the U.S. Environmental Protection Agency, praised the development...

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Woman who was vegetarian for 33 years now meat's biggest champion | [View Clip](#)

08/30/2021

Hill Online, The

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Daily on Energy: How Exxon is looking to shore up policy push for carbon pricing

08/27/2021

Washington Examiner

FULL TEXT

Subscribe today to the Washington Examiner magazine and get Washington Briefing: politics and policy stories that will keep you up to date with what's going on in Washington. **SUBSCRIBE NOW:** Just \$1.00 an issue!

EXXON CARBON TAX PLUG: In an exclusive interview with me for a story published today, Erik Oswald, who leads Exxon Mobil's new Low Carbon Solutions business, acknowledged the well-documented comments by lobbyist Keith McCoy "frustrated" his company's attempts at lobbying for a carbon tax.

Oswald said Exxon quickly reached out to the 11 senators the lobbyist outed as "crucial" to Exxon's lobbying on Capitol Hill, in order to "restate what our views actually are and how we've had this very long-held opinion" about carbon pricing.

Still, Oswald claimed the lobbyist's comments had done more to "hurt" Exxon's advocacy efforts with "people we didn't have a relationship with or had a very negative view of the company or the industry" rather than with allies.

How Exxon's lobbying is being received: Sen. Sheldon Whitehouse, a Rhode Island Democrat and a carbon tax supporter not named in the video, said Exxon has more to prove.

"If Exxon is serious, the company should start by using its considerable lobbying power to advocate for a price on carbon pollution," Whitehouse told me. "It could also commit to full transparency moving forward."

Former GOP Rep. Carlos Curbelo of Florida, who introduced a carbon tax bill in 2018, advised Exxon needs to

“...over-communicate their beliefs, strategy, and investments” in order to “repair and build new alliances with stakeholders in the climate space.”

Other policy focuses: Oswald said Exxon is focusing much of its near-term lobbying on selling the Biden administration and lawmakers in Congress on its so-called carbon capture hub in Houston, which will need significant policy support to get off the ground.

Under the plan, Houston’s plentiful industrial facilities, such as gas-fired power plants, refineries, and chemical manufacturing operations, would install equipment to capture its carbon emissions.

Exxon is calling on Congress to beef up federal tax incentives for carbon capture and storage through the the 45Q tax credit, which enjoys broad bipartisan support. Those expanded subsidies could be included in the forthcoming Democratic reconciliation package, along with a host of other clean energy tax credits.

“Carbon capture is a really well-established part of the climate solution, but that [extra funding source] would get these projects going, and we would start moving to really material amounts of carbon sequestration going on,” Oswald said.

What about net-zero pledge? The Wall Street Journal reported Exxon is considering pledging to reduce its net carbon emissions to zero by 2050, following BP and Shell.

But Exxon isn’t ready to make that commitment “yet.”

“We routinely evaluate our work and commitments and will update our shareholders and the public as those plans evolve,” said Todd Spitler, an Exxon spokesman.

Welcome to Daily on Energy, written by Washington Examiner Energy and Environment Writer Josh Siegel (@SiegelScribe). Email jsiegel@washingtonexaminer.com for tips, suggestions, calendar items, and anything else. If a friend sent this to you and you’d like to sign up, click here. If signing up doesn’t work, shoot us an email, and we’ll add you to our list.

BONUS...EXXON’S OSWALD ON DIRECT AIR CAPTURE: Oswald said Exxon constantly analyzes the potential of pursuing direct air capture projects “sucking carbon directly from the air” but he said the company is keeping its focus on traditional CCUS for now.

Experts say the world won’t be able to keep warming to 1.5 degrees Celsius without large-scale use of carbon removal technologies.

But direct air capture, at least in its present form, is expensive. Oswald pegged the costs per metric ton of carbon removal at between \$400 and \$600, compared to \$85 to \$100 per ton he projects for Exxon’s hub projects.

“It’s a big part of our program, paying attention to it,” Oswald said, adding the technology is “not ready yet for prime time” from the perspective of delivering for shareholders. “It’s a much higher cost way of dealing with the problem.”

JOHN KERRY TO PRESS CHINA ON COAL: Climate envoy John Kerry is planning to visit China next week to press for Beijing to declare a moratorium on financing new coal projects abroad, according to the Wall Street Journal.

Axios reported that’s among several items on the agenda for talks between the two largest greenhouse gas-emitting nations.

Signs China is pulling back? China did not provide funding for coal projects through its Belt and Road Initiative in the first half of 2021, the first time that’s happened since the program launched in 2013, the International Institute of Green Finance said in a recent report.

China’s lack of investment in overseas coal comes after the G-7 banned new government financing by the end of this year for coal plants abroad without carbon capture and storage.

That left China isolated as the only backer of coal globally, applying new pressure on Beijing to curb coal financing as part of its Belt and Road initiative that supports infrastructure in developing countries.

But Kerry is looking for China to declare a formal halt to financing overseas coal projects, the Journal said.

TESLA'S BIG PLAY INTO TEXAS POWER MARKET: Tesla has filed to become a power retailer in Texas.

CEO Elon Musk has established a new subsidiary of Tesla, called Tesla Energy Ventures, that filed in mid-August with the Public Utility Commission of Texas to sell electricity on the retail market, Texas Monthly reported yesterday.

If the filing is approved this November, Tesla's entrance could shake up Texas's deregulated power market.

Tesla could look to sell electricity pulled from the company's home batteries when the grid fails, as it did during February's historic cold freeze that left millions of Texans in the dark for several days.

Tesla could also let individual Texans with solar panels earn money by sharing their excess power with the grid, Texas Monthly said. In its filing, Tesla also confirms plans for two massive battery systems to be deployed in the state, which could stabilize the grid during outages.

Many experts blamed Texas's deregulated electricity market, intended to produce low prices and encourage consumer choice, for the grid's failure in February.

ANOTHER HURRICANE THREAT: A hurricane is expected to hit the southeast United States this weekend as Ida, which strengthened into a tropical storm yesterday, moves over the Caribbean, the Washington Examiner's Misty Severi reports.

Forecasters say it could make landfall as a "major" hurricane somewhere between Texas, Louisiana, and Mississippi by Sunday although the storm's effects will be more far-reaching across the region. The track could shift over the next few days.

Heavy rainfall, strong winds, storm surge, and life-threatening surf and rip current conditions are expected across the Gulf Coast region.

Peak hurricane season is in full swing: Earlier this week, Tropical Storm Henrik hit the Northeast, leaving damage in its wake. Two other disturbances over the Atlantic Ocean are being watched, and if they become strong enough, they will be named Julian and Kate.

New York Times How government decisions left Tennessee exposed to deadly flooding

Wall Street Journal Dow CEO warns of price tag on clean energy plans

Wall Street Journal A fledgling natural gas exporter has become a meme stock

Reuters EPA recommends lowering 2020 biofuel mandates retroactively

MONDAY | AUG. 30

12 p.m. The US-Qatar Business Council will host a webinar event featuring energy experts titled, "How Will LNG Drive a Sustainable Energy World?"

3:30 p.m. Resources for the Future will host a webinar conversation with EPA Administrator Michael Regan to discuss the role of economic analysis in informing environmental rulemaking and policy, regulations for greenhouse gas emissions under the Clean Air Act, environmental justice considerations, and more.

WEDNESDAY | SEP. 1

12:30 p.m. The Nuclear Innovation Alliance will hold a webinar event for the release of the new NIA resource, "Advanced Nuclear Reactor Technology: A Primer."

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Proving the theory that race isn't critical

08/26/2021

Washington Examiner

FULL TEXT

MOBILE, Alabama — For the fifth straight mayoral election in this port city, Mobilians on Aug. 24 showed that people (even supposedly antediluvian Southerners!) are discerning enough to let considerations other than race drive their votes.

Incumbent Sandy Stimpson, one of those dreaded white conservative Republicans who is supposed to be inherently guilty of systemic racism, won a third term in a landslide against four opponents. His 57% of the vote nearly doubled the 29% of six-term city councilman Fred Richardson, who is black. In all three of Stimpson's elections, the number of black people registered to vote exceeded white registration. In the two elections prior to Stimpson's, when Mobile was still a white-majority city, it elected black Democrat Sam Jones as mayor — the first time when black registration was just 43%.

Maybe, just maybe, plenty of good people view the world without looking through racial lenses.

Stimpson certainly has given Mobilians reason to transcend race, even as the outspoken but hard-working Richardson spent a quarter-century yelling "racist" at every opportunity. In his eight years in office so far, Stimpson has assiduously tried to defuse any racial aspect to disputes while genially visiting and working in every neighborhood in the city. He made a priority of condemning, clearing title to, and improving blighted properties. He worked deals to reopen parkland access to Mobile Bay while protecting new acreage for environmental protection, to move the city's commercial air hub to a much more accessible location, to reattract the cruise ship industry, and to serve in numerous ways as a mid-Gulf Coast transportation hub.

Stimpson cut the city's bonded indebtedness in half while increasing tenfold what had been a meager reserve fund. He worked with the city council to update the fleets of police cars and fire engines, improve the rate of identifying criminal perpetrators, drastically improve the quality and safety of public parks, and dedicate well over \$200 million to improved infrastructure. And he did it all with what Rob Holbert, the co-publisher of the centrist "alternative" weekly Lagniappe, once called an "excited, joyful, honest, and positive approach."

Purveyors of critical race theory say that "whiteness" is an evil. For a majority of Mobile voters, though, "whiteness" and "blackness" aren't even things that matter. Instead, conduct and character count. A guy known as MLK once said much the same thing, but maybe he was just some sort of racist.

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Sununu signs PFAS water protection bills for New Hampshire

08/26/2021

Washington Examiner

FULL TEXT

Gov. Chris Sununu has signed several bills aimed at reducing 'forever chemicals' and other contamination in New Hampshire's drinking water systems.

Topping the raft of legislation signed by Sununu is HB 236, which will allow private property owners to sue polluters if they have experienced contamination from per- and polyfluoroalkyl substances. The new law sets a six-month statute of limitations on legal claims.

Sununu also signed HB 235, which is aimed at protecting private well owners whose water could be contaminated by setting new rules on small groundwater withdrawals.

"There's no greater faith placed in the government than when you turn on your faucet, fill up a glass and hand it to your kids," Sununu said in a statement. "We still have a long way to go, but the work we have done in the past few years has just been monumental and these bills are yet another giant step forward for communities across New Hampshire."

Another bill, HB 271, directs the state Department of Environmental Services to establish maximum contaminant limits for PFAS compounds and we will provide grants and loans to local governments to test for and remediate the contaminants.

The bill's primary sponsor, state Rep. Rosemarie Rung, D-Merrimack, called its approval "monumental" and said it will give private well owners and local governments the "tools they need to remediate toxic PFAS chemicals that pose a significant risk to their life and health."

"Everyone deserves the ability to drink their water without fear of health consequences," Rung said in a statement.

The Legislature earmarked \$50 million for the new grant program as part of the recently approved state budget, according to the Sununu administration.

PFAS chemicals were once used in products ranging from rain coats and firefighting foam to nonstick pans. They have been dubbed "forever chemicals" because they accumulate in the human body and can take thousands of years to degrade.

Research has found potential links between high levels of PFAS and illnesses, ranging from kidney cancer to high cholesterol and problems in pregnancies.

The U.S. Environmental Protection Agency has classified the compounds as an "emerging contaminant" linked to liver cancer and other serious health problems.

Dozens of states are weighing proposals to eliminate PFAS in food packaging, firefighting foam and other products, in addition to setting limits on the level of contaminants in drinking water.

New Hampshire set limits on four PFAS chemicals in public drinking water supplies, from 12 to 15 ppt. The limits, which went into effect in 2019, were among the toughest in the nation.

There are currently no federal standards for PFAS in drinking water, but guidelines set a combined limit of 70 ppt.

Photo Caption: Gov. Chris Sununu claps for the Executive Council after swearing them in at his inauguration ceremony in the Executive Council Chamber at the State House in Concord, N.H., on Jan. 7, 2021.

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The World Has Finally Stopped Using Leaded Gasoline. Algeria Used The Last Stockpile | [View Clip](#)
08/30/2021
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...to it. Developed countries phased it out first In the United States, the Environmental Protection Agency started an effort...

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ACE Unveils Never before Demonstrated Hybrid Flex Fuel Vehicle Project at Conference – Advanced BioFuels USA | [View Clip](#)
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Advanced BioFuels USA

...up to E85 matched to an electric motor for a combined 188 horsepower. "EPA assigns vehicles a carbon intensity (CI) score based on how...

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...Bay, a pact between the states whose waterways reach the bay and the U.S. Environmental Protection Agency that outlines...

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Advanced BioFuels USA

(Inside EPA) EPA is asking a federal appeals court to voluntarily remand Trump-era decisions that granted 31 small refinery waivers...

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...at least a couple of days because of the lack of power and fuel. The U.S. Environmental Protection Agency issued emergency...

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\$13.2 Bn Geosynthetics (Geotextile, Geomembranes, Geogrids, Geofoams, Geonets) Markets - Global Forecast to 2026 - ResearchAndMarkets.com | [View Clip](#)

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...in a variety of applications ranging from infrastructure development to environmental protection. Geotextile accounted for the...

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Annihilare Announces UNC Partnership for Technology Development | [View Clip](#)

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...environments for all people with our cutting-edge technology, and our EPA registered and Green Seal® certified cleaners and disinfectants....

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Aptive Environmental Recognized as No. 10 on Utah Business' 2021 | [View Clip](#)

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...Magazine's Best Companies in America. Aptive is also a proud member of the EPA's Pesticide Environmental Stewardship Program and has...

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Do I need to drink filtered water or is tap OK?

08/30/2021

Star Democrat, The

These days, a trip to the grocery store requires nerves of steel. The cost of everything, it seems, is soaring. One thing is for sure: It's time to hunker down and find reasonable ways to cut food costs every way that we can. Here's one: Stop buying bottled water.

Tap water is safer than bottled water. The water supply in the U.S. is regulated by the Environmental Protection Agency under very strict guidelines and rules that are heavily enforced.

Bottled water is subject to Food and Drug Administration rules, which are far less stringent. For example, tap water by law requires disinfection. Testing for bacteria must be conducted hundreds of times per month. Bottled water, on the other hand, is not required to be disinfected; the frequency of bacteria testing is fewer than five times each month.

Tooth decay in children is making a big comeback. It's not the water that's causing the decay, according to the World Dental Congress. It's the lack of fluoride. Parents believe they are giving their children a superior product in bottled water, but in fact, they are depriving kids of the fluoride and minerals they need to build healthy teeth and bodies.

Mary invites you to visit her at EverydayCheapskate.com, where this column is archived complete with links and resources for all recommended products and services. Mary invites questions and comments at <https://www.everydaycheapskate.com/contact/>, Ask Mary.

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08/30/2021

Star Democrat Online, The

...be? The reason is simple. The water supply in the U.S. is regulated by the Environmental Protection Agency under very strict...

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CarBuzz

...it offered best-in-class 250 hp and 440 lb-ft of twist and returned an EPA-estimated 30 mpg highway rating. Buyers also benefit from up to...

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1 Based on EPA estimates on a full battery charge. Actual range will vary with options, driving conditions, driving habits, vehicle...

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'Ready as we can be': FEMA, other agencies in place for Ida | [View Clip](#)

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...in place in Louisiana and three more teams were in Alabama, FEMA said. Environmental Protection Agency spokeswoman Jennah...

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Rec Water Solutions and Sigura Water Enter Into an Exclusive License Agreement | [View Clip](#)

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...and residential use. AlgaeShield, MetalShield and PristineBlue are EPA registered and NSF Certified to ANSI Standard 60. More information...

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The state of our bees | [View Clip](#)

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Baltimore Jewish Times Online

...their wares. However grim things may look now, Goembel said the Environmental Protection Agency is now taking more...

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Trends in U.N. Climate Report Point to an Altered Chesapeake Bay | [View Clip](#)**08/30/2021*****Chestertown Spy, The***

...Chesapeake Executive Council, which includes the administrator of the U.S. Environmental Protection Agency, governors of...

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UN hails end of poisonous leaded gas use in cars worldwide | [View Clip](#)**08/30/2021*****WBFF-TV - Online***

...prevented by the ban. Janet McCabe, deputy administrator of the U.S. Environmental Protection Agency, said measurements...

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Anne Arundel County Chamber of Commerce to induct 4 into Business Hall of Fame**08/25/2021*****Daily Record, The***

The Anne Arundel County Chamber of Commerce will recognize the outstanding achievements of several members and induct four members into the Business Hall of Fame during its 15th annual Hall of Fame and Awards Dinner.

The 2021 hall of fame inductees are James Johnson, Ph.D., Elizabeth Kinney, Maryland Sen. Pamela Beidle and Carter Heim. The chamber will also present the Lifetime Achievement Award Karen Olscamp, the former CEO of the University of Maryland Baltimore Washington Medical Center.

Johnson has a distinguished academic and professional career in civil engineering. He has held leadership positions as interim president of the Baltimore City Community College, chair of the Anne Arundel Community College and chair of the Maryland Association of Community Colleges which oversees the 16 community colleges in Maryland.

In addition to his leadership positions, Johnson was a professor of civil engineering and the Dean of the College of Engineering, Architecture and Computer Science at Howard University. He was also the Director of the National Center for Environmental Research for the Office of Research and Development at the U.S. Environmental Protection Agency. Beidle has served the citizens of Anne Arundel County as an elected official for more than 20 years. She was elected to the County Council in 1996, serving two terms. In 2006 she was elected to the House of Delegates where she served until 2018 when she was elected to represent the people of the 32nd District in the Maryland Senate.

In addition to her legislative work, Senator Beidle has volunteered her time to be a member of many community groups and was a small business owner as the president of the Beidle Insurance Agency from 1979 to 2017. She has served as a board member for the Anne Arundel Economic Development Corporation (AAEDC), Leadership Anne Arundel, the Anne Arundel Federal Savings Bank and the Hospice of the Chesapeake.

Kinney moved to Annapolis in 1981 where she owned and operated several small businesses including a graphic arts firm, a retail store, and a health and wellness consulting company. While those business interests were quite diverse, Kinney always believed in "giving back" to the community so she volunteered to serve on several nonprofit boards including Londontowne, the Key School and the Maryland Social Services Board. She eventually became the president of the Friends of the Light House Shelter Board in 2004. She became the executive director in 2011 and provided a great deal of vision and dedication that included a very successful fundraising effort known as the "Campaign for Shelter" which raised more than \$8 million and resulted in the development of a 24,000-square-foot facility.

In addition to housing solutions, the Light House Shelter, under Kinney's leadership, developed several unique programs to address this issue of homelessness with employment training services and social enterprises such as the Light House Bistro to life which is a restaurant with a housing facility upstairs.

Heim has more than 30 years of experience serving businesses and organizations throughout Anne Arundel County. In 1984, Carter formed Hammond & Heim which lead to establishment of Heim Associates in 1995 which eventually became HeimLantz CPAs and Advisors.

In addition to running his own company, Heim has been a very active leader in the accounting profession. He is past president of the Maryland Association of Certified Public Accountants and served on the board of directors of the American Institute of Certified Public Accountants.

In the business community, Carter served on the Board of Directors of Bank of Annapolis, and served on the Board of Anne Arundel Workforce Development Corporation. He has also found time to serve as the President of the Board of Directors at the Anne Arundel Community College, was on the Board of Trustees of the Chesapeake Bay Trust and served as the Chairman of the Board of Trustees of St. Mary's School.

Olskamp started with the hospital in 1987 and has been vital part of the University of Maryland Baltimore Washington Medical Center's growth and its recognition as a top notch medical facility. In January, she retired after 12 years as CEO.

During her tenure as CEO, the hospital greatly expanded its obstetrics, behavioral health, cancer, critical care, and surgery programs. In 2009, the Pascal Women's Center, which expanded obstetric care opened along with a new building which added 111 private patient rooms to the hospital. She also oversaw the completion of a \$31 million surgical suite expansion, launched a new electronic medical record system, opened new nursing units, constructed a second state-of-the-art endovascular suite, and increased the number of inpatient beds to the behavioral health and labor and delivery units.

Aside from the new construction and equipment, Olskamp is most proud of the recognition the hospital received for the quality of care provided to the patients at UM BWMC. The hospital has been honored by organizations such as the American Heart Association, U.S. News & World Report, the Maryland Patient Safety Center, and the Leapfrog Group for its delivery of safe, high-quality care. Karen's leadership and dedication to providing compassionate and high quality medical care to the has greatly improved the quality of life for all Marylanders.

To be considered for the Business Hall of Fame a person must be a well-known, recognized, and respected business leader who has a career of distinctive achievements in leading his or her business. Former government officials who consistently supported business initiatives and leaders of non-profit, educational and community service organizations are also eligible.

Important consideration is also given to those individuals who have made significant contributions to the community and exemplify the meaning for corporate citizenship.

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DEP will spray for mosquitoes in Haven and Cressona | [View Clip](#)

08/31/2021

Republican Herald Online

The Pennsylvania Department of Environmental Protection will be spraying Tuesday in Schuylkill Haven and Cressona.

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Ridgway Record

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Daily Press, The

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...Márquez wrote that the Trump water rule, which was jointly written by the Environmental Protection Agency and the Army Corps...

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Reading will drain Bernhart Dam
08/31/2021
Reading Eagle

Aug. 31â€”The clock is ticking for Reading to find a solution to Bernhart Dam.

The state Department of Environmental Protection designated it a high-risk dam and told the city it needed to remove or replace the structure in 2016.

"Bernhart Dam remains in poor condition and should be rehabilitated or breached," the reported stated.

Monday night at City Council's committee of the whole meeting, council learned that the dam will no longer be covered by insurance four months from now.

"What has come to our attention is the insurance company is forcing us to dewater," said Stan Rugis, deputy public

works director and capital project manager. "As of the first of the year, the city of Reading will not be able to have that dam insured."

The city is seeking bids for companies to lower the water level behind the dam, Rugis said.

The dam is owned by the city but is located in Muhlenberg Township.

"This is an issue we have been trying to tackle for many years with several administrations, " said Council President Jeffrey S. Waltman Sr. "It's not an easy one."

Rugis said there are issues with the spillways and that some of the coffer dams are starting to degrade.

"We need to address them quickly," he said. "Once it is dewatered, we will inspect the dam."

The state wants the dam removed, Rugis added.

"However, once we get further we can understand the physical construction," Rugis said. "I can tell you she was built very well and very sturdy, but you just don't know. That's why we are moving forward with this."

Once the city lowers the water level in the dam, there will be another problem.

Bernhart Park, where the dam is located, is contaminated with lead from the former Exide Technologies plant.

In phase two of the project, the city would work with partners such as the county and U.S. Environmental Protection Agency to clean up the site, Rugis said.

The next phase would be remediation and further discussion with the DEP and EPA, Rugis said.

Another matter the city has to consider is the surrounding park.

"There has been an ecosystem that has developed over the 100-plus years that has developed into something other than a stream bed," Rugis said.

Councilwoman Donna Reed asked Mayor Eddie Moran's administration to meet with Muhlenberg residents about the future of the dam.

"They people that live around it are very invested around it," she said. "We certainly owe them that explanation."

The administration agreed and said it would discuss the plans with the township.

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Inventor buys former Titus Generating Station in Berks for \$200,000**08/30/2021*****Reading Eagle***

Aug. 30—A King of Prussia inventor has purchased the former Titus Generating Station in Cumru Township from GenOn for \$200,000, according to Berks County records.

Joe D'Ascenzo wants to turn the former coal plant into a plastic recycling facility that would take trash and turn it into plastic pellets. He envisions the property around it as a hub for other recycling businesses.

It would be the first facility in the United States for ReFineD Plastics LLC, according to D'Ascenzo, who is president and chief technology officer of the six-year-old advanced recycling company. D'Ascenzo, a Chester County native and graduate of Ursinus College, has a master's degree in molecular biology from Drexel University. He helped develop the process, some of which is patented.

Six buildings and 139 acres of the former Titus property on Poplar Neck Road were sold to D'Ascenzo's Recycle the World Inc., a nonprofit company that says it's focused on research and development of technologies to decrease, and eventually eliminate, the need for landfills.

GenOn, a bankrupt energy company based in Texas, confirmed the sale but declined comment.

In March, GenOn conveyed another Titus tract that contains an ash pile to Trogon Development, a company based in Puerto Rico that is a subsidiary of Capexel. Trogon also acquired two retired coal plants in Pennsylvania and three coal ash landfills. Capexel specializes in acquiring brownfields and developing them for reuse.

In April 2020, an environmental covenant, a deed restriction that gives the state Department of Environmental Protection oversight, was placed on the property.

What's next for Titus

D'Asenzo had been negotiating to buy the property for three years but had access to it well before the deal closed. Most recently he had suffered \$3 million loss due to damage when vandals attempted to steal copper there.

D'Ascenzo estimated the operation will need at least 40 different permits. He expects the process to take two years and \$120 million to build.

"It will be at least a year and a half until we get the sewer and water," he said.

D'Ascenzo expects to immediately begin hiring about 20 people to start cleaning up the grounds and 150 to 170 once the project is completed. He plans to set up an office in Reading and be more present in the area as he seeks community support.

He said agreements with companies that want to locate in tracts near Recycle the World are in the works but declined to reveal details.

"It's wonderfully exciting," D'Ascenzo said. "It's taken us about three years to get to this point."

The company received a \$3 million grant from the U.S. Department of Commerce, which it can access now that the sale is complete.

D'Ascenzo said previously that he has spoken with representatives of Western Berks Landfill, which is an adjacent property and could be a source of waste to convert to plastic. No deals or agreements have been made, he said.

The facility would process 1,600 tons of waste per day, D'Ascenzo said.

About 98% of the waste would be converted to virgin grade pellets for use in the plastics industry. The rest would be sorted for recycling or converted into fuel.

Titus Station's three existing boilers with turbines would be recommissioned to provide renewable energy to the grid, its consultant, Toronto-based DigiMax, wrote in a March 2020 news release.

ReFineD Plastics uses a process called pyrolysis, which is high heat without oxygen to break down waste. It is has been a mechanism to turn plastic waste into jet fuel.

The pellets would be virgin grade, meaning they are a quality that could be used by a variety of plastic manufacturers. The material won't originate in the recycle bin but will come from household trash.

Not without controversy

The kind of recycling proposed for Titus has met opposition from groups such as the Clean Air Council when it was included in new regulations.

Last year, a law was introduced for advanced recycling adding definitions of advanced recycling, including operations such as gasification, pyrolysis and post-use polymers to state solid waste law. It allows burning plastic waste to be considered recycling and be less regulated, critics claimed. It had bipartisan support and was signed by Gov. Tom Wolf in November.

D'Ascenzo hailed it then as opening up a new economy for Pennsylvania.

A storied, historic property

The storied coal-generating plant that towered over West Shore Bypass and along the Schuylkill River has been part of the fabric of Berks County for decades.

Built in 1948 by Metropolitan Edison Co., Titus was named after former Met-Ed President O. Titus and was completed in 1951, but did not go online until 1953. The site was selected because of its access to water and coal. Until its closure, coal arrived by Norfolk Southern rail cars as it did in the 1950s. It drew about 2 million gallons of water a day from the Schuylkill for its cooling tower.

The aging power plant began deactivation Sept. 1, 2013, after multiple owners tried to keep up with increasingly rigorous environmental regulations.

Titus Station, which had three coal-fired boilers and two gas-fired or oil-fired combustion turbines with a capacity of 274 megawatts, was fully decommissioned in June 2014.

It was one of hundreds of coal-fired plants in the United States that have been decommissioned in favor of cleaner natural gas.

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SCRIP celebrates 30 years

08/30/2021

Daily American

The 30th Anniversary of the Stonycreek-Conemaugh River Improvement Project (SCRIP) will be celebrated on Sept. 29 with a guided tour of the Oven Run Abandoned Mine Drainage (AMD) passive treatment systems on the Stonycreek River.

The tour will begin at Greenhouse Park in Conemaugh Township at 4 p.m. where participants will depart in vans or buses for the treatment system destination.

Representatives from SCRIP and the Somerset Conservation District will be on hand to provide information, lead the tour and answer questions. Upon return to the park at 6:30 p.m. everyone is welcome to attend a Green Drinks social gathering at the nearby Crow's Nest Restaurant to learn more about natural resource conservation in Somerset County and throughout the region.

The tour is free and open to the public, but preregistration is required at <https://www.eventbrite.com/e/scrips-30th-anniversary-oven-run-tour-green-drinks-tickets-165418817135>.

SCRIP was officially created at an "ad hoc committee" meeting at U. S. Congressman John Murtha's office in Johnstown on Aug. 7, 1991. The concept was to have SCRIP become the coordinating force behind the attempt to reduce historic AMD pollution in the Stonycreek and Little Conemaugh watersheds.

That goal was something that had not been attempted in the past and success was not assured. The initial board members of SCRIP were chosen from the Conservation Districts in Somerset and Cambria counties, sportsmen groups, non-profits, business and industry and state and federal agencies. Their assignment was daunting.

As founding and still current SCRIP board member Joe Gorden said, "When Congressman Murtha created SCRIP, he charged it with making Johnstown's rivers swimmable, fishable and drinkable by 2000. The task seemed insurmountable and there were many doubters. But, that goal has largely been achieved and the community with facilities such as Greenhouse Park and water borne recreation such as the Stonycreek Rendezvous and businesses such as Coal Tubin'

bring people from far and near to recreate in a region that had little to offer in that regard prior to SCRIP's efforts."

SCRIP took advantage of new and untested technology such as wetland passive treatment systems and assessed the countless AMD pollution sources, secured land rights to locations where systems could be built, enabled the funding, design, administration and eventual construction of the treatment systems through orchestrating and empowering its local, state and federal partners to achieve those goals.

The historic improvement of water quality in the Stonycreek River has fueled an economic revival in the Cambria-Somerset region. The water quality improvement, that has provided clean water for industrial and potable water and restored over 20 miles of fishery, is the foundation upon which all of the other outdoor oriented amenities now in place were built that have collectively created a thriving eco-tourism industry in the region.

The success of SCRIP was highlighted with the naming of the Stonycreek River as River of the Year in the state in 2012.

SCRIP's successes have not stopped there. Among other major achievements is the public acquisition of the Manufacturers Water Company properties that included the Quemahoning Reservoir and over 5,000 acres of land and water.

That initiative began at a SCRIP board meeting in 1997 and SCRIP and its conservation partners created a plan for acquisition, secured the purchase costs and built public and legislative support for the effort to bring two counties together to do something that had not been done before. The formation of the Cambria-Somerset Authority in 2000 was a direct result of those challenging several year long efforts.

More recently SCRIP was the most influential organization in working with the Pennsylvania Department of Environmental Protection (PA DEP) to resolve a major permitting issue with Corsa Coal that will now enable an active AMD treatment system to be designed, funded and constructed in the Shade Creek watershed. When complete it will restore over 18 miles of Shade Creek and significantly improve the water quality of the lower Stonycreek River.

As SCRIP Chairman Tom Clark puts it, "I believe the resurgence you are seeing in the region is a direct reflection of the resurgence of our rivers. That would not have happened without SCRIP bringing parties together over the last 30 years. Every year we take bigger bite of the apple with restoration projects and every year our rivers improve a little more. The biggest bite is yet to come with the planned PA DEP Little Conemaugh River Active Treatment Plant near Portage."

Gorden said, "If SCRIP quit now, it would have to be considered a success beyond expectations. But there is much more to be done. Among other things there needs to be continuing funding support for and maintenance of the treatment systems that brought the Stonycreek River back. Otherwise we stand to lose much of what we have gained." To learn more about SCRIP visit www.scrippa.org or contact the Somerset Conservation District at 814-445-4652 Ext. 5 or the Cambria County Conservation District at 814-472-2120.

The Mountain Laurel Chapter of Trout unlimited will host its fundraising banquet on Sept. 11 at the Holiday Inn in Johnstown. The event will feature prize raffles and information on the cold water conservation projects of the chapter in Bedford, Cambria and Somerset counties. Doors open at 5 p.m. Tickets are \$35 a person and are available by calling 814-266-4763.

The Jenner Rod and Gun Club's Annual Youth Pheasant Hunt will take place on Oct. 9 beginning at 8 a.m. at the club's picnic grounds located at 157 Geiger Road, Friedens. The event is free and open to hunters with a valid youth hunting license. Participants need to bring an orange hat and vest, hunting license, shotgun and shells. The club will provide guides, dogs, pheasants and lunch. Pre-registration is required at <https://www.register-ed.com/events/view//171363>. For further information or assistance in registering call or text Logan Lichvar at 814-248-1640.

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Marcellus shale well proposed in Upper Burrell

08/27/2021

Tribune-Review

Olympus Energy LLC will present its plans for a new Marcellus shale gas well in Upper Burrell township during a hearing before the township supervisors Wednesday.

Drilling a Marcellus shale gas well requires a controversial natural gas extraction process known as fracking.

Arconic owns the property, at 4806 Seventh Street Road, for the proposed well.

It's zoned industrial, but a conditional use hearing is required in the township for all oil and gas development.

Supervisors could vote on final approval of the well after the hearing Wednesday.

Olympus, based in Canonsburg, has been working with the Pennsylvania Department of Environmental Protection to secure the necessary permits for the pad, known as the Selene Well Pad, according to Kimberly Price, company spokeswoman.

This will be Olympus' third Marcellus shale well in the township. The other two well sites are the Calliope well, off White Cloud Road, and the Zeus well, off Guyer Road.

"We knew from the beginning Olympus would be doing three or four wells in the township," said Ross Walker, chairman of the township supervisors.

Walker said there haven't been any reported problems with the existing Marcellus shale wells.

If approved by the supervisors, Price said the proposed schedule for well development includes construction of the well pad in late 2022 and drilling in 2023.

However, the schedule could be accelerated by one year, she added.

The route for hauling equipment and materials to the site includes Route 380 and Route 780, Price said.

No township-owned roads will be used for the project, she said.

The primary source of water for the project, which is needed for fracking, will be piped to the site.

"This will result in a significant reduction in associated truck traffic," Price said.

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On Shenandoah River, algae and bacteria continue to plague recreation - and human health | [View Clip](#)
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Virginia Mercury, The

...Riverkeeper Network, which includes the Shenandoah Riverkeeper, sued the EPA over its approval of DEQ's decision to not list the...

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9TH CIRCUIT RENEWS 'SIGNIFICANT NEXUS' TEST IN LONG-RUNNING WETLANDS SUIT
08/30/2021
Water Policy Report

Posted August 16, 2021

A federal appellate court is criticizing EPA's attempts to end long-running litigation over whether the Clean Water Act (CWA) applies to wetlands on an Idaho couple's property but is rejecting the property owners' effort to throw out a broad Supreme Court test for determining if waterbodies are jurisdictional.

In a unanimous Aug. 16 ruling in *Sackett v. EPA*, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit rejects the agency's argument that the case had become moot by EPA's 2020 withdrawal of its 2008 compliance order, agreeing with Chantell and Michael Sackett that there is nothing to prevent EPA from deciding in the future to resume enforcement.

But the panel also rejects the Sacketts' arguments that a 2007 9th Circuit ruling in *Northern California River Watch v. City of Healdsburg* is no longer good law.

Healdsburg held that then-Justice Anthony Kennedy's "significant nexus" test in *Rapanos v. United States* is the controlling rule of law on CWA jurisdiction.

"[T]he Sacketts' arguments fail, and Healdsburg remains law of the circuit--meaning the Kennedy concurrence is still the controlling opinion from *Rapanos*," Judge Michelle Friedland writes.

The Sacketts are represented by the free-market Pacific Legal Foundation, which maintains the correct CWA jurisdiction test is that articulated by the late Justice Antonin Scalia in his plurality opinion in *Rapanos*. Scalia said the CWA extends only to waters that are "relatively permanent, standing or continuously flowing" or to wetlands that are immediately adjacent to such waters.

The ruling follows Nov. 20 oral argument where Friedland and Judges Ronald Gould and Jill Otake, sitting by designation from the U.S. District Court for the District of Hawaii, pressed Department of Justice (DOJ) attorney Brian Toth, who was representing EPA, on the mootness question.

Gould in particular was concerned whether the court could review the case since EPA had withdrawn the 2008 compliance order, which was an amended version of a 2007 compliance order the Sacketts litigated.

A three-judge panel of the 9th Circuit, in a 2010 opinion written by Gould on the Sacketts' initial challenge to the 2007 compliance order, found that the CWA precludes pre-enforcement judicial review of administrative compliance orders.

But the Supreme Court, in a unanimous 2012 opinion written by Scalia, said recipients of such orders can challenge the orders in court even before the agency seeks to enforce them.

The new ruling also follows supplemental briefing earlier this year where EPA cited the high-profile 9th Circuit ruling in *United States v. Lucero*, to argue the narrowed Trump-era definition of waters of the United States (WOTUS) has no bearing on the Sacketts' case because the definition is not retroactive. Mootness Question

On the question of mootness, Friedland makes a detailed rejection of EPA's arguments that the Sacketts' challenge is moot because the agency sent the couple a two-paragraph letter in 2020, while the case was pending before the 9th Circuit, announcing it had withdrawn the amended 2008 compliance order and has no plans to issue a similar order in

the future.

According to the agency, its withdrawal of the amended compliance order effectively granted the Sacketts complete relief, which mooted the case. But the Sacketts disagreed, explaining that the status of their property remains unsettled and that EPA did not withdraw the 2008 jurisdictional determination (JD) made by an EPA employee that was the basis for the enforcement action.

"EPA's stated intention not to enforce the amended compliance order or issue a similar one in the future does not bind the agency, and EPA could potentially change positions under new leadership," Friedland writes. Further, the letter did nothing to alter EPA's position throughout this litigation that it has authority to regulate the Sacketts' property, and during oral argument the DOJ attorney was unwilling to state that EPA lacked authority over the property, she adds.

"The agency could have disavowed the JD, but it declined to do so. Accordingly, because we cannot conclude that it is 'absolutely clear' that EPA will not either reinstate the amended compliance order (or issue a new one), this case is not moot," Friedland continues.

The JD is relevant not because of its potential to serve as "final agency action," but rather because it demonstrates EPA's refusal to concede that it lacks the authority to regulate the Sacketts' land, the judge says.

Friedland also says EPA's argument that it has provided full relief to the Sacketts "ignores the practical realities of the Sacketts' predicament," where if the case were dismissed as moot, the couple "would be stuck in the same regulatory quagmire they have been in for the past thirteen years."

And while EPA invokes the general presumption of good faith that the government traditionally enjoys in the context of mootness by voluntary cessation, "the agency's conduct prevents that presumption from carrying the day," Friedland says.

While the two-paragraph March 2020 letter to the Sacketts said EPA had resolved "several years ago" not to enforce the amended compliance order, that announcement came on the eve of EPA's filing deadline for its opposition brief -- a deadline the 9th Circuit had already extended twice.

"If we are to take EPA's letter at face value, the agency caused the Sacketts to litigate cross-motions for summary judgment in the district court, participate in mediation, and then pursue this appeal after the agency had already concluded it would never enforce the challenged compliance order," Friedland writes.

"Forcing the Sacketts to engage in years of litigation, under threat of tens of thousands of dollars in daily fines, only to assert at the eleventh hour that the dispute has actually been moot for a long time, is not a litigation strategy we wish to encourage," she adds.

Finally, while EPA argues the Trump-era definition of WOTUS now governs authority over wetlands such that any judicial decision regarding the prior regulation would be purely advisory, the 9th Circuit says a decision resolving whether the Sacketts' interpretation of the CWA is correct will not be purely advisory.

"At bottom, the central dispute in this case remains unresolved. The Sacketts are still, thirteen years later, seeking an answer to whether EPA can prevent them from developing their property. Accordingly, we hold that this case is not moot," the decision says. CWA Jurisdiction

On the question of CWA jurisdiction, Friedland notes the 9th Circuit is not writing on a blank slate and references the court's Healdsburg ruling.

The Sacketts, however, contended that a 2016 en banc decision from the 9th Circuit in *United States v. Davis*, where the court clarified how it analyzes how to interpret a fractured Supreme Court decision, fatally undermines Healdsburg such that is no longer law of the circuit.

Specifically, the Sacketts said that *Davis* embraced a reasoning-based approach to conducting an analysis under the Supreme Court's principles in *Marks v. United States*, which says the controlling holding of a fractured decision is "the narrowest ground to which a majority of the Justices would assent if forced to choose in almost all cases."

But because the court in Healdsburg did not employ a reasoning-based framework when performing its *Marks* analysis of Rapanos, the Sacketts say Healdsburg is no longer good law.

"We disagree," Friedland writes. "In our circuit, a three-judge panel may abandon the holding of a prior panel only when

intervening higher authority is 'clearly irreconcilable' with that earlier panel opinion. Therefore, we will disregard Healdsburg only if it is clearly irreconcilable with our en banc decision in Davis."

The 9th Circuit's Marks analysis in Healdsburg consisted of a single paragraph that endorsed the 7th Circuit's 2007 Marks analysis in *United States v. Gerke Excavating, Inc.* The 7th Circuit decision elaborated on why the Kennedy concurrence articulated a narrower ground for reversing than did the Scalia plurality such that "the Kennedy concurrence is the least common denominator."

Friedland acknowledges that "Gerke's analysis does not fit neatly into either a reasoning-based or a results-based Marks framework, and portions of the opinion are consistent with the results-based Marks analysis that we rejected in Davis."

But, she continues, while "Gerke is not a paradigmatic example of a reasoning-based Marks analysis, it is not 'clearly irreconcilable' with such an approach. And because Healdsburg adopted Gerke's application of Marks, we conclude that Healdsburg's 'theory or reasoning' was likewise not clearly undercut by Davis."

Friedland also rejects the Sacketts' argument that Healdsburg improperly relied on the Rapanos dissent in its Marks analysis, saying a post-Davis ruling cited by the Sacketts -- *Cardenas v. United States* -- merely references Davis, "a decision in which we explicitly reserved judgment on the very question that the Sacketts assert Cardenas decided."

And because "Healdsburg primarily relied on Gerke, we similarly conclude that the mention of the Rapanos dissent in Healdsburg does not indicate that Healdsburg relied on that dissent," the judge says. -- Lara Beaven (lbeaven@iwpnews.com)

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A SECOND DISTRICT COURT JUDGE REMANDS CWA 401 RULE WITHOUT VACATUR

08/30/2021

Water Policy Report

Posted August 13, 2021

A federal district court judge in Pennsylvania has granted EPA's request to remand without vacatur a Trump-era rule that narrowed how states evaluate whether federal permits protect state water quality standards, becoming the second such judge to reject environmentalists' claims that vacatur is necessary to prevent harm.

Such decisions generally ease agency efforts to revise regulations because it avoids a vacatur that environmentalists are seeking, which would otherwise force officials to start any new rulemaking from scratch. But Biden administration officials in this and similar cases have instead argued vacatur is unwarranted because they already are planning a new rulemaking where environmentalists can press forward with their arguments.

In his Aug. 6 ruling in *Delaware Riverkeeper Network, et al. v. EPA*, Senior Judge Michael Baylson of the U.S. District Court for the Eastern District of Pennsylvania says remand is appropriate because the agency has indicated its clear intent to revise the Clean Water Act (CWA) section 401 rule on its own.

"It would not serve interests of judicial economy to continue a case regarding a Rule that will likely no longer to be law once the agency makes its revisions. Thus, the key question here is whether vacatur of the Rule is appropriate," he says.

His decision relies heavily on a 2001 ruling from the U.S. Court of Appeals for the Federal Circuit in *SKF USA Inc. v. United States*, which EPA cited in its push for remand without vacatur.

While the facts are different in *SKF USA*, that ruling's discussion of remand is relevant because it discusses a situation in which the agency seeks to revise a decision based on its belief that the substance of its prior decision was incorrect, as opposed to a procedural or clerical issue, the judge says.

SKF USA concerns a calculation of a tax by the Department of Commerce and not a rule, so it does not discuss vacatur specifically, but "under the principles described by the D.C. Circuit in this case, allowing the agency to use its discretion to revise the Rule here would be appropriate," Baylson says.

"The Rule is not being remanded based on an invalid process, and it has also not been found to be invalid at this stage

in the case," the decision says. "The parties have also not pointed to other specific consequences of vacatur. As the Court has not yet, and will not, make a finding on the substantive validity of the Certification Rule, the principles discussed in SKF USA support a remand without vacatur."

EPA's arguments in this case mirror its claims in South Carolina Coastal Conservation League (SCCCL), et al. v. EPA and ones it is making in consolidated litigation known as In re Clean Water Act Rulemaking that remand without vacatur is appropriate because the agency has publicly announced its intention to reconsider and revise the rule.

The agency says remand without vacatur conserves the parties and the court's resources by resolving the current litigation and would not prejudice plaintiffs, who can participate in the rulemaking process. Additionally, the agency argues that allowing the rule to remain in place during that process is not undue prejudice to plaintiffs because going through the rulemaking process is the best way to promote stability under the Administrative Procedure Act.

EPA states it is committed to providing assistance to stakeholders and working with agency partners to address plaintiff's concerns in the interim. Environmentalists' Arguments

In the SCCCL case, Judge Bruce Howe Hendricks of the U.S. District Court for the District of South Carolina granted EPA's request for remand without vacatur Aug. 2 without commentary on his reasoning.

Senior Judge William Alsup of the U.S. District Court for the Northern District of California has scheduled an Aug. 26 hearing on EPA's motion for remand without vacatur in the consolidated litigation.

Delaware Riverkeeper argued vacatur should also accompany remand of the rule, or in the alternative, that the case should proceed on the merits. The environmental group argued it would be prejudiced by allowing the rule to remain in place because it will continue to suffer the harms alleged under the rule for at least two years while final revisions to the rule are promulgated.

And the group contended that EPA cannot argue the harms from leaving the rule in place are too speculative as Baylson previously struck down such arguments in his December 2020 ruling that found environmentalists had standing.

But Baylson sides with EPA in finding the principles discussed in SKF USA support a remand without vacatur.

Intervenor-defendants in the litigation filed a collective motion to strike the plaintiffs' response to EPA's motion for remand without vacatur, raising procedural concerns. The intervenors include a group of Republican state attorneys general from Arkansas, Louisiana, Mississippi, Missouri, Montana, Texas, West Virginia, and Wyoming as well as American Petroleum Institute, Interstate Natural Gas Association of America, and National Hydropower Association.

The intervenors argued the plaintiffs' response was procedurally improper because it sought affirmative relief through a response as opposed to filing a motion, adding that by making their arguments in a response brief rather than a motion, the plaintiffs deprived the intervenors of an opportunity to oppose the request for remand with vacatur or proceeding on the merits.

Delaware Riverkeeper Network countered that the intervenors were aware of the plaintiffs' intention to oppose EPA's motion for remand without vacatur and the intervenors had the opportunity to file a brief in support of EPA's motion.

"The Court will deny Defendant Intervenor's Motion to Strike because they had the opportunity to present arguments in support of Defendants' Motion and/or in opposition to Plaintiffs and chose not to. There is no basis for striking Plaintiffs' Response," Baylson says. -- Lara Beaven (lbeaven@iwpnews.com)

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BERGER NAMED ACTING NAVY UNDER SECRETARY

08/30/2021

Inside the Navy

Posted August 24, 2021

Navy Secretary Carlos Del Toro has named Meredith Berger, the current assistant secretary for energy, installations and environment, as the acting under secretary of the Navy effective Wednesday.

Berger is succeeding acting under secretary Hondo Geurts, who assumed the position in February after serving as the Navy's acquisition executive from December 2017 to January 2021. Geurts is retiring after 34 years of government service.

Berger previously served as the deputy chief of staff to the Navy secretary from 2014 to 2017, and has also held other positions at the Defense Department, Environmental Protection Agency and Florida Department of Financial Services.

The Senate confirmed Del Toro as Navy secretary earlier this month. -- Aidan Quigley

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Biden's Afghanistan Withdrawal Fiasco Threatens DC's Domestic Expansion Agenda | [View Clip](#)

08/30/2021

RedState

...who served as the national ozone director in Afghanistan's National Environmental Protection Agency until the (Taliban)...

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DEMOCRATIC STATES BACK CALIFORNIA IN CWA SECTION 401 DEADLINE LITIGATION

08/30/2021

Water Policy Report

August 17, 2021

Washington and 11 other states with Democratic attorneys general are backing California's push to overturn six orders from the Federal Energy Regulatory Commission (FERC) that found the Golden State waived its Clean Water Act (CWA) section 401 authority to certify that FERC licenses for hydropower projects will protect state water quality standards.

"In order for states to make informed and reasoned decisions, they must be able to undertake a complete assessment of the project's water quality impacts and mitigation proposals," the states say in an Aug. 13 amicus brief to the U.S. Court of Appeals for the 9th Circuit in consolidated litigation known as California State Water Resources Control Board (WRCB) v. FERC.

"Because this process can reasonably extend beyond one year for complex projects, an applicant's withdrawal and resubmission of its request for certification is a practical procedure that is permissible under the plain language of the Clean Water Act, consistent with the legislative intent of the Act, and furthers the principles of judicial economy and the public interest," the brief adds.

States joining the brief in addition to Washington are: Connecticut, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Virginia and Vermont as well as the District of Columbia.

FERC has repeatedly found that to avoid waiver of a state's 401 authority, the state agency must either grant or deny certification within one year of the licensee filing the certification request, and that a withdrawal and resubmission of a certification request does not restart the clock, citing the D.C. Circuit's 2019 ruling in Hoopa Valley Tribe v. FERC.

But the 4th Circuit last month in North Carolina Department of Environmental Quality v. FERC opened the door to a more flexible interpretation of section 401's deadlines, although the court overturned a FERC waiver decision on narrow, factual grounds.

Both WRCB in its opening brief and the amicus states reference the 4th Circuit ruling to argue that Hoopa Valley is a flawed, narrow and fact-specific decision that is not applicable in the California case and that FERC's waiver decisions unlawfully expand the narrow waiver criteria established by Congress.

Additionally, the amicus states argue FERC's waiver findings undermine states' authority to regulate water quality within their borders, that the CWA allows withdrawal and resubmission of section 401 certification applications without waiving state authority, and that withdrawal and resubmission of such applications without waiving state authority is effective and efficient.

The litigation comes as the Biden administration has obtained a remand without vacatur from two district courts of a Trump EPA rule that limited when states can require additional pollution controls under section 401 and endorsed the bright-line, one-year deadline for state action in Hoopa Valley. A third case challenging the rule in the U.S. District Court for the Northern District of California is still pending.

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DEQ takes comments on MVP; DEQ taking public comments on Mountain Valley Pipeline stream crossings
08/30/2021
Roanoke Times, The

The Virginia Department of Environmental Quality is accepting written comments through Oct. 27 on a draft permit that would allow the Mountain Valley Pipeline to cross streams and wetlands in the counties of Giles, Craig, Montgomery, Roanoke, Franklin and Pittsylvania.

Comments can be submitted to Steve Hardwick via postal mail at DEQ Central Office, P.O. Box 1105, Richmond VA 23218; email at MVP@deq.virginia.gov; or fax at 804-698-4032.

Oral comments can be made at two public hearings: Sept. 27 at the Pigg River Community Center in Rocky Mount and Sept. 28 at Radford University's Kyle Hall. Both hearings will start at 6 p.m.

The draft permit can be viewed at
<https://www.deq.virginia.gov/home/showpublisheddocument/10518/637654889508463767>

For those fighting the Mountain Valley Pipeline, scattered stretches of water, wetlands and national forest may soon be all that's left to defend.

Construction crews working through the summer have completed large sections of the 303-mile natural gas pipeline that starts in northern West Virginia, passes through the New River and Roanoke valleys, and connects with another pipeline near the North Carolina line.

The latest question - whether Mountain Valley should be granted permission to cross water bodies - is now reaching a key stage.

On Saturday, the Virginia Department of Environmental Quality began taking public comments on a draft permit that would allow Mountain Valley to dig trenches for the buried pipe through streams and wetlands, impacting surface water in 428 locations. That's an area of slightly more than 9 acres and 17,000 linear feet of streams and rivers along the pipeline's 107-mile path through Southwest Virginia.

Two public hearings, in Rocky Mount and Radford, will be held in late September. The deadline for written comments is Oct. 27, and the State Water Control Board is expected to make a final decision in December on whether to grant a water quality certification to MVP.

The process is off to a rocky start, with pipeline opponents saying that a recommendation by DEQ's staff to approve the permit foreshadows what will happen.

"This proposal is an abdication of DEQ's duty to protect Virginians and our precious resources," read a statement from Appalachian Voices, Sierra Club, the Protect Our Water, Heritage, Rights coalition and Wild Virginia, four organizations that have long opposed the project.

"We now call on the citizen-led State Water Control Board to reject DEQ's recommendation and deny the certification," the groups said.

Action by the board is needed before the U.S. Army Corps of Engineers decides whether to give Mountain Valley what's called a Nationwide Permit 12.

The company's initial attempt to use a blanket form of that permit was waylaid by legal challenges from environmental groups. Mountain Valley then applied for an individual Nationwide Permit 12, which entails a more detailed analysis of each water body crossing.

Mountain Valley has failed to present, and DEQ did not consider, the full impact on streams and wetlands, opponents say.

"We are confident that a full description of the likely impacts from the remaining work MVP proposes is being withheld for one simple reason - it is abundantly clear that MVP cannot plow through these water bodies without causing unacceptable damages and violating state and federal laws," said David Sligh, conservation director of Wild Virginia.

A Mountain Valley spokeswoman said Friday that the company is reviewing the draft permit.

The joint venture of five energy companies building the pipeline "looks forward to working cooperatively with the agency through the remaining stages of the process," Natalie Cox wrote in an email. "As always, MVP intends to uphold its environmental commitments to the highest standards as set forth by the agency."

The draft permit is 51 pages long and includes a number of conditions, including time-of-year restrictions on work to protect endangered species such as the Roanoke logperch and the candy darter. Mountain Valley must purchase mitigation credits to compensate for impacts to streams and wetlands.

Approval by Virginia regulators is not the only hurdle MVP must clear before it can start work in streams and wetlands.

The West Virginia Department of Environmental Protection is considering a similar water quality certification for construction in that state. And concerns about the stream crossings have been raised by the U.S Environmental Protection Agency.

In a letter to the Army Corps, the EPA wrote that the project may not comply with its guidelines, which require all impacts on streams to be minimized. "At this time, EPA recommends that the permit not be issued," the letter states, although it goes on to say that modifications could alleviate the possible problems.

A third category of stream crossings would be governed by the Federal Energy Regulatory Commission, the lead agency overseeing construction of the \$6.2 billion project. Earlier this year, Mountain Valley filed an application with FERC to bore under about 120 streams in the two Virginias.

In an environmental assessment released earlier this month, FERC found that the boring method would cause fewer impacts than open-cut crossings, which the two states are considering. That process entails temporarily damming a stream, digging a trench along the exposed bottom, burying the 42-inch diameter pipe and then restoring the water flow over the pipeline.

Mountain Valley evaluated each stream crossing to determine if boring was possible, according to DEQ. In those where the length of the crossing, depth of the stream, surrounding slopes and other factors eliminated the option of boring, the open-cut method will be used.

When construction began in 2018, Mountain Valley's plans called for crossing nearly 1,000 streams and wetlands. About half of those were completed before the company ran into legal problems with its initial Nationwide Permit 12 two years ago.

In Virginia, Mountain Valley has identified 236 remaining stream crossings, 92 of which would entail using the boring method, according to DEQ.

Boring is planned for the Roanoke River along the Montgomery-Roanoke county line. The north fork of the river in Montgomery County has already been crossed via the open-cut method.

In asking the state water board to stop Mountain Valley from completing the crossings, Sligh cited the company's "deplorable record of violating environmental rules since it began work."

Muddy water has often flowed unchecked from construction areas when it rains, and DEQ found more than 300 violations of erosion and sediment control regulations.

Mountain Valley counters that record levels of rainfall were responsible for many of the infractions, and that it has made improvements since 2018 in curbing storm water runoff.

While work has continued along parts of the pipeline's route that steer clear of water bodies, a 3.5-mile section that passes through the Jefferson National Forest is still off limits.

In 2018, concerns about erosion prompted a federal court to remand a permit from the U.S. Forest Service that would have allowed the pipeline to burrow through sections of public woodlands in Giles and Montgomery counties.

The Forest Service renewed its approval in January but required Mountain Valley to wait until it has all of its permits in hand before resuming work in the national forest.

Final action on the stream crossing permits by state and federal agencies is not expected until early next year.

Critics have called on FERC to follow the Forest Service's example by barring any work until all of the permits are approved. The commission has split 2-2 on some matters involving the pipeline. A fifth member, who opponents believe could swing the vote their way, has not yet been nominated by President Joe Biden.

In October 2019, after three sets of permits were struck down by legal challenges, FERC issued a stop-work order. It was lifted a year later, as the pipeline began to get renewed approvals.

About a half-dozen legal challenges - which include an appeal of the Forest Service's latest decision and the U.S. Fish and Wildlife Service's finding that construction would not jeopardize endangered species in the pipeline's path - remain pending.

Oral arguments in those cases have yet to be scheduled. By the time that happens, Mountain Valley may have completed all work except for its route under streams and through the national forest.

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ENVIRONMENTALISTS EYE RARE ORDER TO FORCE EPA ACTION ON PUGET SOUND

08/30/2021

Water Policy Report

Posted August 23, 2021

A Pacific Northwest environmental group is asking the U.S. Court of Appeals for the 9th Circuit to issue a rare writ of mandamus to force EPA to respond to the group's petition seeking the withdrawal of Washington state's delegated Clean Water Act (CWA) permitting program, and to require stricter discharge limits in Puget Sound.

The newly filed petition from Northwest Environmental Advocates (NWEA) comes in the wake of the 9th Circuit's mandamus ruling earlier this year that forced EPA to ban the pesticide chlorpyrifos and the court's landmark ruling in late 2017 that forced the agency to update lead paint dust rules.

"Because a writ of mandamus is necessary to remedy EPA's egregious delay, preserve this Court's jurisdiction, provide NWEA with access to judicial relief, and protect Puget Sound and all its inhabitants, NWEA respectfully requests that this Court issue a writ of mandamus compelling EPA to respond to NWEA's Petition within 90 days and retain jurisdiction to ensure EPA's response is complete," the filing says.

NWEA petitioned EPA in 2017 to withdraw Washington state's National Pollutant Discharge Elimination System (NPDES) permitting authority, arguing the state's failure to set strict discharge limits for nutrients and other pollution in wastewater treatment plants' NPDES permits violated the CWA.

Specifically, the group asked EPA to either correct Washington's NPDES program or withdraw the state's permitting authorization; respond to the petition in writing; make a determination that the state's administration of the NPDES program is inconsistent with federal law; notify the Washington Department of Ecology that its program is violating the CWA; and schedule a public hearing on these violations.

But EPA has never responded to the petition, prompting the group to take court action given Washington state plans to address some nitrogen discharges through a single general permit that would cover 58 municipal sewage treatment plants that discharge directly into Puget Sound without establishing what NWEA says is necessary nitrogen limits.

"EPA has done nothing to remedy Washington's complete regulatory failure to control sewage wastes in Puget Sound," NWEA Executive Director Nina Bell said in an Aug. 23 statement. "After decades of inaction, now Ecology is proposing to issue a permit to cover sewage discharges from just some sewage treatment plants without the required limits, but

EPA still hasn't batted an eye. The time for turning EPA indifference into EPA leadership is now," she said.

NWEA acknowledges in its filing with the 9th Circuit that unreasonable delay claims made under the Administrative Procedure Act are usually brought in federal district court. But, NWEA continues, the All Writs Act provides federal courts with the authority to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

"Accordingly, this Court has jurisdiction to issue NWEA a writ of mandamus," NWEA tells the 9th Circuit.

Additionally, the CWA gives circuit courts "exclusive jurisdiction over EPA's action as to Washington's NPDES permit program, but if EPA continues to ignore NWEA's Petition, this Court will never get the opportunity to review EPA's response as Congress intended," NWEA says.

"NWEA is not asking this Court to require that EPA implement any particular policy. Rather, NWEA is asking only that the Court order EPA to either grant or deny NWEA's Petition, so that the organization can move forward with its work to protect Puget Sound," the filing says. 'Discrete Action'

The group continues by telling the court that "[b]ecause responding to NWEA's Petition is a discrete action that EPA is legally required to take, this Court can compel EPA's response through issuance of the writ sought herein."

In an Aug. 23 press release, NWEA says its petition to EPA reviewed a total of 103 nitrogen sources to Puget Sound comprised of: 67 sewage treatment plants that discharge directly to Puget Sound, 8 industrial sources of nitrogen, and 28 sewage facilities that discharge to Puget Sound tributaries. Ecology's proposed general permit excludes nine non-municipal sewage treatment plants out of the 67 that discharge to the sound.

The court filing says excessive pollutants from wastewater discharges are degrading Puget Sound water quality through several mechanisms, with nutrient pollution being the catalyst for many of these harmful processes and thus one of the most serious threats to the sound's recovery.

First, nutrients deplete dissolved oxygen upon which aquatic life depends, the filing says. "Second, and relatedly, while even non-toxic algal blooms are harmful, nutrient pollution also feeds several variants of algae that are toxic to humans and aquatic life," the filing continues, adding that as a third concern, nutrient pollution is contributing to the acidification of Puget Sound.

Finally, NWEA says, in addition to nutrients, wastewater discharges contain toxic substances that harm marine species.

"Despite the importance of Puget Sound to Washington's commerce, recreation, and tourism industries, Ecology has repeatedly failed to implement its NPDES program in a manner that complies with the Clean Water Act," the court filing says.

The CWA requires authorized states to issue NPDES permits with limits stringent enough to prevent loss of designated uses, exceedances of water quality standards, and general degradation, but, systemically, Washington's program is not meeting these requirements, NWEA argues.

"Because many areas in Puget Sound are impaired for dissolved oxygen and otherwise not attaining water quality standards, Ecology's failure to impose limits designed to remedy these deleterious impacts violates the Clean Water Act," the filing says.

A group of House Republicans earlier this month asked the Government Accountability Office to review federal efforts to recover salmon populations in Puget Sound, including EPA's role in enforcing CWA protections against wastewater treatment plants.

EPA and the National Marine Fisheries Service (NMFS) "have spent millions of dollars in an effort to restore Puget Sound salmon, yet salmon numbers continue to decline. Of particular concern is that municipal wastewater treatment facilities in Puget Sound continue to exceed standards for water quality discharges," Rep. Cathy McMorris Rodgers (R-WA) wrote in an Aug. 11 letter to GAO. -- Lara Beaven (lbeaven@iwppnews.com)

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ENVIRONMENTALISTS SEEK BROADER CALIFORNIA PFAS DRINKING WATER TESTING

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Water Policy Report

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Environmentalists have released a new report showing varying levels of contamination in California drinking water with per- and polyfluoroalkyl substances (PFAS), findings aimed in part at spurring broader testing and treatment of contaminated water, especially in disadvantaged communities that appear to be experiencing higher concentrations.

"What the report is really trying to say, ironically, is that we don't have all the information," says a source with one of the groups that produced the document, "Dirty Water: Toxic 'Forever' PFAS Chemical Are Prevalent in the Drinking Water of Environmental Justice Communities," released Aug. 18.

"If you look at where these sites are, based on what we know, which is limited, we're seeing that disadvantaged communities tend to be much more heavily burdened, and are often burdened by other environmental contaminants," the source adds. "So the report is saying we need to get a better picture -- we need to capture [other] places that are really struggling on water quality."

The report, produced by the Natural Resources Defense Council (NRDC), Community Water Center, Physicians for Social Responsibility-Los Angeles, and Clean Water Action, used California government agency data sources to compile PFAS contamination figures, according to a press release from the groups. ??

It is unclear what degree of health risks are posed by the amounts of PFAS detected in drinking water across the state, in part because regulators and scientific researchers are still working on such determinations.

Among other things, the report finds that "limited testing conducted to date shows that PFAS pollution in California is widespread, potentially affecting 16 million Californians"; PFAS pollution is "more intense in communities already overburdened by multiple sources of pollution and by other factors that make them more sensitive to pollution"; and testing is "far too limited, making it impossible to know the full scope of the PFAS problem."

For example, current testing "covers only 3 percent of public water systems; information is still lacking for thousands of water systems and private wells," the report states.

In addition, monitoring "is only conducted for 18 individual PFAS out of thousands."

"These findings are just the beginning of the problem in California," said Anna Reade, an NRDC staff scientist, according to the release. "The state needs a comprehensive testing program for these hazardous chemicals, a plan to clean up and safely dispose of them, and policies to end use of PFAS whenever possible."

The groups charge the full extent of PFAS in drinking water may be much worse than the report shows, because they say half of Californians "do not have data or information about what's in their drinking water, especially those in rural communities."

PFAS include thousands of chemicals often referred to as "forever chemicals" because they take years or decades to degrade and bioaccumulate in humans, animals and plants. While there is some uncertainty about their adverse effects, there is growing evidence they can cause a range of harms, including immuno-toxic effects, cancer and other diseases.

PFAS are used in a wide variety of consumer and industrial products. Large potential contamination sources include industrial facilities, landfills, wastewater treatment plants, airports, oil and gas facilities, and military bases, where firefighting foam containing PFAS was or is used in large quantities in training exercises, they add. ?? WRCB Efforts

In 2020, the California Water Resources Control Board (WRCB) lowered the threshold levels of the two most-studied PFAS in drinking water that trigger responses by local water systems, setting new response levels (RLs) of 10 parts per trillion (ppt) for perfluorooctanoic acid (PFOA) and 40 ppt for perfluorooctanesulfonic acid (PFOS).

Previously, the RL was 70 ppt for the total concentration of the two contaminants combined, a level that mirrored EPA's health advisory levels but which many states are increasingly seeing as insufficient.

But environmentalists say that while WRCB is conducting some testing for PFAS in communities located near airports and landfills, for example, it must greatly expand and speed up testing.

"Monitoring and testing for PFAS is essential to understanding how widespread the pollution is, and for rural communities across the state, a huge data gap still exists," said Erick Orellana, a policy advocate at Community Water Center, according to the release. "We need to find out to what extent there is PFAS in rural communities' drinking water and hold polluters accountable for the contamination they've caused."

WRCB is "just moving at a snail's pace," adds the environmental organization source. "And frankly, California is behind other states." WRCB should aim to test for numerous PFAS at every public water system in the state, "to just get an idea of the scope" of the PFAS contamination problem, the source adds.

A WRCB spokesman declined to comment on the environmentalists' report, but pointed to the board's website on PFAS activities for more information.

California's Office of Environmental Health Hazard Assessment (OEHHA) is currently proposing to set strict public health goals for the two most-studied PFAS -- PFOA and PFOS -- prompting some environmentalists to tout the limits as a marker for EPA to set drinking water standards for the compounds much more stringent than the agency's current health advisory levels.

OEHHA is recommending a limit of 7 parts per quadrillion for PFOA and 1 ppt for PFOS. California PHGs are analogous to the Safe Drinking Water Act's maximum contaminant level goals (MCLGs) and are based exclusively on public health considerations. A PHG is the amount of a chemical in drinking water at which adverse health effects are not expected to occur from a lifetime of exposure.

When setting enforceable drinking water standards, both California and EPA rely on their respective goals but also consider economic factors and technological feasibility.

OEHHA's release of its proposed goals come as EPA is preparing to begin public review of its MCLG for the two substances, with the agency currently seeking nominations for a scientific advisory panel that will review draft documents analyzing health effects data to be used in deriving EPA's health-based drinking water goals.

However, the environmental organization source says that there are dozens more PFAS contaminating drinking water, making the OEHHA effort focusing on two of them inadequate to help protect communities from the broader PFAS problem. -- Curt Barry (cbarry@iwpnews.com)

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EPA EYES FIRST-EVER SDWA FINDING TO PROVIDE CHLORINE SUPPLIES FOR UTILITIES

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Water Policy Report

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EPA is considering issuing first-ever "certifications of need" under the Safe Drinking Water Act (SDWA) for 10 water treatment facilities that have had difficulty obtaining chlorine needed for water treatment processes, which if finalized would allow the Department of Commerce to order chemical producers to provide the disinfectant.

The agency announced in the Aug. 13 Federal Register that it has received applications for the certifications from seven drinking water systems and three publicly owned treatment works (POTW), the majority of which are located in California, with the utilities citing force majeure or unavailability of treatment chemicals via normal procurement channels.

The announcement follows an electrical failure earlier this year at Westlake Chemical in Washington state that disrupted chemical supply chains for water and sewer utilities in Oregon, Washington, Idaho and parts of California, according to the Oregon Office of Emergency Management and the Association of California Water Agencies (ACWA).

EPA is taking public comment until Aug. 27 "from chemical producers and repackagers that could supply the required chlorine, sodium hypochlorite, or ferric chloride to the applicants, and from any other interested parties" on the SDWA section 1441 applications, the notice says.

The applicants indicated that if their public water systems cannot obtain a sufficient and reliable supply of the required treatment chemical in the form used at that treatment facility, they would be compelled to issue boil water notices and

Tier 1 public notifications or shut down the treatment system until the supply of the required treatment chemical is restored, the notice says.

If public water systems are forced to shut down, the communities served by the system would lack a safe drinking water supply, with significant consequences to public health and the local economy, the notice continues.

Similarly, if POTWs lack adequate chlorine or derivative chemical supplies, they would be unable to disinfect treated wastewater prior to discharge to surface waters, potentially leading to an increase in the concentration of pathogens in the surface water, which may be used by downstream drinking water utilities as a source of drinking water or by recreational users, the notice says.

Federal and state homeland security officials began notifying utilities of the potential supply problem in June, prompting the utilities to begin raising their concerns to EPA then.

And EPA in late June published on its website information on how utilities can invoke the process in SDWA section 1441 that authorizes the Commerce Department to order vendors to supply public drinking water or wastewater utilities with necessary chemicals.

The National Association of Clean Water Agencies (NACWA), which represents POTWs, explained to its members in a June 23 news update that supplies of sodium hypochlorite and other chlorine products have been reduced due to equipment failure and other problems at production facilities. "Utilities on the West Coast and some other parts of the country have received force majeure letters from their suppliers explaining the shortage and its unknown duration," NACWA said.

And ACWA said in a June 23 news release that state and local utilities had met with EPA's Water Security Division and Region 9 to express their concern about the chlorine shortage, with the SDWA section 1441 process discussed as a legal means for a water utility to have a supplier/manufacturer provide that utility with a product that is in short supply. Section 1441

The section 1441 process prioritizes critical utilities over other less essential items, although the process for an order to be issued to a producer or manufacturer can take two to four weeks, depending on the location of the supplier.

"EPA will confer with the Department of Commerce and other industry leaders to communicate the need to prioritize delivering disinfectant products to water and wastewater utilities," ACWA said.

And the Federal Register notice says EPA Administrator Michael Regan wrote to the chemical sector June 30 encouraging chemical manufacturers and suppliers to prioritize drinking water and wastewater systems. "EPA has been in frequent communication with representatives from the chemical sector, including specific chlorine producers and chlorine repackagers. While drinking water and wastewater disinfection accounts for less than 5% of chlorine consumed in the U.S., the water sector's use of this chemical is essential for protecting public health," the notice says.

EPA explains on a frequently asked questions page about section 1441 on its website that before seeking a certification of need, utilities should first work with their current chemical suppliers and contact other potential suppliers in their area, as well as consulting with state officials who may be aware of other options during emergency situations for addressing the shortage while maintaining compliance. Additionally, utilities may also contact neighboring utilities or local mutual aid networks for potential supply options.

Nonetheless, EPA says utilities should consider applying for a certification of need "at their earliest opportunity if it appears that a chemical may not be available in the quantity needed for treatment in the future."

In issuing a section 1441 order, the Department of Commerce would consider several factors, EPA says on its website. These include equitably apportioning orders as far as practicable among manufacturers and distributors; the geographical relationships and established commercial relationships between suppliers and utilities; the amount of chlorine historically supplied by a producer and the share of each such producer of the total annual production of chlorine in the United States, and other factors determined to be relevant.

The utilities seeking a certification are: the Mission Basin Groundwater Purification Facility, Weese Filtration Plant, and San Luis Rey Water Reclamation Facility in Oceanside, CA; Western Water Recycling Facility and Western Riverside County Regional Wastewater Authority in Riverside, CA; City of Poway, CA; Helix Water District, CA; Jordan Valley River Water Conservancy District, UT; City of Farmington Water and Wastewater Utility, NM, and Niagara Falls Water Board Wastewater Treatment plant, NY. -- Lara Beaven (lbeaven@iwpnews.com)

EPA FINALIZES IRIS ASSESSMENTS FOR FUEL ADDITIVES, PROPOSES PFBA VALUES

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Water Policy Report

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EPA has released its first new Integrated Risk Information System (IRIS) chemical assessments in years, finalizing long-awaited studies of the fuel additives ethyl tertiary butyl ether (ETBE) and tert-butyl alcohol (TBA) that eased proposed risks values for ETBE while floating first-time proposed values for perfluorobutanoic acid (PFBA).

Coming just months after the Biden administration rolled back Trump-era policies that sidelined IRIS in favor of the TSCA program, the three releases, issued jointly late on Aug. 18, highlight officials' renewed emphasis on IRIS.

This includes the White House's request to boost its budget in fiscal year 2022 and efforts by EPA's research office to unwind reforms ordered by former Administrator Andrew Wheeler that halved the number of chemicals under review at the program and slowed its output dramatically.

While IRIS officials have sought to reinvigorate the program in recent months, including reopening the process for other EPA offices and regions to nominate chemicals for assessment and releasing an updated program "outlook" agenda, it had not yet released any new draft or final chemical assessments since the transition.

But the Aug. 18 release meets IRIS' self-imposed target to take final action by the end of FY21 on its ETBE and TBA assessments, after both went through several drafts -- most recently in 2017 -- and to propose the draft PFBA assessment in the same timeframe.

Specifically, the agency has crafted less-stringent risk values for ETBE than it used in either draft, while maintaining the proposed levels for TBA.

And the PFBA assessment marks the first federal attempt to identify safe exposure levels to that chemical, after the Agency for Toxic Substances and Disease Registry (ATSDR) declined to set such levels in its final toxicological profile for several per- and polyfluoroalkyl substances (PFAS).

The draft PFBA assessment is the first of IRIS' five pending PFAS assessments to reach publication. The other PFAS under assessment are perfluorodecanoate (PFDA), perfluorohexanoic acid (PFHxA), perfluorohexane sulfonic acid (PFHxS) and perfluorononanoate (PFNA).

EPA has targeted those five for review at the request of its water, Superfund, toxics, and children's health offices, as well as its regional offices and states, all of which said more robust assessments would help inform their decision-making on the chemicals.

New risk values on the PFAS could aid calls for stringent drinking water limits and other rules on their use, disposal and cleanup, though environmentalists have argued that EPA can craft strict Toxic Substances Control Act (TSCA) limits for PFAS as a class without waiting for toxicity data on the thousands of known perfluorinated substances. PFBA Risk Values

Specifically, EPA says in the draft assessment that available evidence indicates that oral exposure to PFBA is likely to cause adverse thyroid, hepatic, and developmental effects in humans based on multiple high and medium confidence animal toxicity studies.

But it says no human or animal toxicity studies are available to inform the potential for PFBA to cause adverse effects via inhalation, and therefore the agency did not craft a reference concentration (RfC) for safe airborne exposure levels.

Similarly, no human or animal studies are available to inform the potential for oral or inhalation exposure to cause genotoxicity or cancer, EPA says.

Rather, the draft assessment calculates organ- or system-specific reference doses (RfDs) -- the greatest amount EPA estimates can be ingested daily over a lifetime without experiencing a related adverse non-cancer effect -- in three areas as well as an overall RfD and an overall subchronic RfD.

These are a liver RfD of 0.001 milligram per kilogram bodyweight per day (mg/kg-day), a thyroid RfD of 0.001 mg/kg-day, and a developmental RfD of 0.007 mg/kg-day. EPA says the overall RfD of 0.001 mg/kg-day is based on increased liver hypertrophy and decreased total T4. The overall subchronic RfD of 0.007 mg/kg-day is based on developmental delays. Fuel Additives

The final ETBE assessment shows changes from a 2017 draft in three of the four risk calculations, with only the cancer inhalation risk estimate, or inhalation unit risk (IUR) remaining the same at 8×10^{-5} per milligram per cubic meter of air (mg/m^3). While the 2017 draft calculated an oral cancer potency estimate, or oral slope factor (OSF), of 1×10^{-3} per $(\text{mg}\cdot\text{kg}/\text{day})^{-1}$, the final ETBE assessment contains no OSF.

"A quantitative estimate of carcinogenic potential from oral exposure to ETBE was not derived because an increase in tumors was not observed in the two available chronic oral cancer bioassays," the final assessment says, citing a 1999 study.

And a route-to-route extrapolation of cancer risk from the inhalation-to-oral route was not carried out because there was no consistent dose-response relationship observed for liver tumors when compared across oral and inhalation studies on the basis of physiologically based pharmacokinetic (PBPK) modeled internal dose, the assessment adds.

The final ETBE assessment also makes changes to non-cancer risk calculations. The draft ETBE RfC, which is analogous to the RfD but applies to inhalation, was $9 \text{ mg}/\text{m}^3$. But the final RfC is $40 \text{ mg}/\text{m}^3$.

For the RfD, the draft ETBE assessment set a figure 0.5 mg/kg-day while the final value is 1 mg/kg-day.

Meanwhile, the final TBA assessment is unchanged from the 2017 draft with an OSF of 5×10^{-4} per mg/kg-day, with no IUR calculated because no chronic inhalation studies of exposure to TBA are available. Mouse thyroid tumors served as the basis for the OSF, but route-to-route extrapolation is not possible for these thyroid effects in mice because the only PBPK model available is for rats, the assessment says.

The RfC for TBA is $5 \text{ mg}/\text{m}^3$ while the RfD is 0.4 mg/kg-day.

The fuels and chemical industries raised numerous objections to the draft ETBE and TBA assessments, arguing they were too conservative, misinterpreted data and that neither chemical should be a priority for an IRIS assessment because ETBE was not used in the United States and TBA is a chemical intermediate to which there is not broad exposure.

TBA, however, is a metabolite of ETBE as well as another fuel oxygenator, methyl tert-butyl ether (MTBE), which was widely used in the United States in the 1990s to meet Clean Air Act standards. Groundwater contamination from leaking fuel storage tanks prompted dozens of states to ban MTBE's use in gasoline and liability concerns caused refiners to stop using it in the 2000s.

An EPA Science Advisory Board peer review panel struggled to reach consensus on recommendations regarding the 2017 draft ETBE and TBE assessments, with some panelists raising concerns about both the agency's draft cancer and non-cancer risk calculations. -- Lara Beaven (lbeaven@iwpnews.com)

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EPA FINALIZES UPDATED LAKES NUTRIENT CRITERIA WITH MINOR REVISIONS

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Water Policy Report

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EPA has updated its nutrient water quality criteria for lakes and reservoirs for the first time in 20 years, issuing a document that differs only slightly from a proposal that had drawn concern from states and water utilities who charged that it could hamper states' efforts to develop such criteria.

But in its response to comments document, issued alongside the criteria, the agency is emphasizing states' flexibility to incorporate local data into the criteria's national models to account for unique local conditions.

The "Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs" released Aug. 13 are the first update to recommended numeric nutrient criteria EPA developed in 2000 and 2001 for lakes and reservoirs for 12 out of 14 ecoregions of the conterminous United States.

The criteria are part of the agency's push to help states address the increasing harmful effects of nutrient pollution due to climate change and come as EPA is also releasing other tools to help states deal with harmful algal blooms (HABs), which are triggered by excess nutrients.

"EPA's new resources advance the agency's commitment to providing innovative, science-based and data-informed tools to support our partners' efforts to reduce nutrient pollution and harmful algal blooms, and to empower the public to stay informed of their health risks," EPA Assistant Administrator for Water Radhika Fox said in a Aug. 13 statement. "With stressors like climate change exacerbating the effects of excess nutrients in waterways, it's crucial that our partners have the water quality standards and advisory programs in place that can protect our communities."

The recommended criteria are models for total nitrogen and total phosphorus concentrations in lakes and reservoirs to protect three different designated uses -- aquatic life, recreation, and drinking water source protection -- from the adverse effects of nutrient pollution, the agency says in an Aug. 13 Federal Register notice.

Changes in the final recommended criteria document, compared to the May 2020 draft posted for public comment, include technical revisions to the models limited to the parameter estimates for the zooplankton model, which were updated to reflect a slight change in how the model calculates seasonal mean biomasses of phytoplankton and zooplankton, the notice says.

Other changes include the addition of an appendix that provides an example workflow for identifying appropriately protective numeric nutrient criteria using the interactive tools, as well as minor editorial revisions that clarify or expand on existing text, the notice adds.

In comments on the draft criteria last year, state clean water and drinking water regulators, as well as wastewater and drinking water utilities, raised numerous concerns about the technical document, saying the guide could actually hamper states' efforts to develop such criteria.

For example, the Association of Clean Water Administrators and the Association of State Drinking Water Administrators said the draft criteria "may impact the progress of ongoing or planned nutrient criteria implementation, particularly where states have already adopted numeric criteria." EPA Response

EPA in its response to comments document says it does not consider the technical approach used in its new criteria to conflict in any way with previous scientifically defensible approaches it has recommended under Clean Water Act (CWA) section 304(a).

"States may use these criteria recommendations separate from or in conjunction with other scientifically defensible approaches to derive numeric nutrient criteria for lakes and reservoirs. Additionally, states may use EPA's recommendations as an independent, yet complementary line of evidence that corroborates other lines of evidence from which they derive numeric nutrient criteria for lakes and reservoirs," the response to comments says.

EPA says it sought to find regulatory balance in its recommendations, offering constructive information that states can use to reliably derive numeric nutrient criteria for lakes and reservoirs while at the same time avoiding prescriptive, "one-size fits all" recommendations.

"As such, EPA refrained from recommending specific values from the models. Instead, EPA chose to craft flexibilities in the recommendations in which states can customize the models with state-specific data to generate candidate criteria to reflect the environmental conditions of their lakes and reservoirs," the response says.

Furthermore, EPA continues to provide technical support to states and authorized tribes for deriving numeric nutrient criteria through its Nutrient Scientific Technical Exchange Partnership & Support (N-STEPS) program, and by providing model visualizations, EPA sought to provide an operating tool that would facilitate state regulatory decision making and adoption of numeric nutrient criteria, the response says.

"EPA also refrained from offering prescriptions on what constitutes 'other scientifically defensible methods' or the conditions under which a state would not use its recommendations, choosing instead to let states articulate the scientific and technical rigor associated with their preferred data and methods," the response says.

In an Aug. 13 press release, EPA says states can consider adopting the recommended criteria into their water quality

standards but are not required to revise existing EPA-approved criteria or total maximum daily load (TMDL) targets.

The release of the updated lakes criteria comes as the agency has also published a new interactive map that will allow the public to learn about and track reported cyanobacterial HABs (cyanoHABs), which can harm ecosystems and contaminate freshwaters with toxins that carry serious human health impacts. EPA says there is scientific consensus that the incidence of cyanoHABs has increased in the nation's freshwater systems in recent years, in part due to climate change.

The new tool consolidates freshwater advisory and closure information from state environmental and health agencies into what the agency describes as user-friendly, interactive maps.

Additionally, EPA has published the "Final Technical Support Document: Implementing the 2019 Recommended Recreational Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin." The document explains how states may adopt EPA's 2019 recommended criteria for the two cyanotoxins into their water quality standards or use the criteria in swimming advisory programs.

The document also addresses implementation of the 2019 criteria recommendations through other CWA programs including identifying and listing of impaired waters, and TMDL development. -- Lara Beaven

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EPA OFFICIALS TOUT RANGE OF EJ ACTIONS IN RESPONSE TO NEJAC CONCERNS

08/30/2021

Water Policy Report

Posted August 19, 2021

EPA political leaders are citing a wide array of ongoing and planned actions that they say will respond to a host of unfulfilled recommendations sought by the agency's National Environmental Justice Advisory Council (NEJAC), a body that was largely sidelined by the Trump administration but is now central to President Joe Biden's equity agenda.

Speaking on a virtual meeting of the NEJAC Aug. 18, a top agency leader as well as key program office officials lined up to pledge their support to boost EJ.

For example, Deputy Administrator Janet McCabe promised that the agency will coordinate NEJAC's work with the newly created White House Environmental Justice Advisory Council (WHEJAC), a key NEJAC request.

Both EPA and the White House Council on Environmental Quality, which is leading broader Biden administration EJ efforts, "support this request," McCabe said.

Acknowledging a very heavy workload on EJ issues that spans essentially all the agency's areas of responsibility, McCabe said, "We need to be as efficient as possible." NEJAC need not engage on "every single thing," McCabe added.

Ensuring a common purpose with WHEJAC and avoiding duplication of effort is one of many demands made by NEJAC, among others that often date back years but received no satisfactory EPA reply, according to a NEJAC letter sent to EPA July 12 to mark Biden's first 100 days in office.

EPA will issue an extensive written response to the NEJAC letter by Oct. 1, according to agency officials.

In addition to McCabe, EPA assistant administrators or their deputies outlined additional actions they said respond to at least some of the many recommendations contained in the letter.

For example, Radhika Fox, head of the water office, focused on three substantive issues on which NEJAC has raised concerns -- the Flint, MI, water quality crisis, EPA's water infrastructure plans, and the agency's actions to reduce risks posed by per- and polyfluoroalkyl substances (PFAS).

NEJAC in a July 2017 letter, referenced in the 100-day letter, made a slew of recommendations to improve water quality testing in Flint, replace lead pipes, monitor spending of federal funds and state actions to resolve the crisis, and involve local communities in solving problems, among other goals.

Fox outlined monthly meetings between EPA, state and city officials on the subject, and "deep engagement" on the issue of removing lead and copper pipes, while also touting community roundtables EPA is holding on similar issues around the country.

On infrastructure, Fox noted that the water office is running pilot programs on how to implement Biden's "Justice 40" initiative that aims to dedicate 40 percent of the benefits of federal spending on clean infrastructure to helping EJ communities.

The office will use drinking water and other funds to further these objectives, but the sums of money available will depend on developments in Congress on infrastructure and the budget, Fox said.

And Fox touted steps EPA is taking to mitigate PFAS contamination, such as the development of a National Primary Drinking Water Standard for the chemicals. Ethylene Oxide

Air office acting chief Joe Goffman, meanwhile, outlined actions EPA is taking in response to another area of concern raised by NEJAC's 100-day letter -- contamination caused by the solvent ethylene oxide (EtO).

Goffman confirmed EPA will reconsider air toxics rules for five industry sectors using the conservative 2016 risk assessment for the chemical developed by the agency's Integrated Risk Information System (IRIS) program that found EtO much more harmful than previously thought.

"We stand firmly behind the ethylene oxide value" developed under IRIS in 2016, Goffman said, adding that EPA is now conducting a series of community outreach meetings to involve local communities in seeking solutions. Such meetings will serve as a "platform" for rule development, Goffman said.

Goffman also said EPA will look at the rules under its Clean Air Act section 112(f)(2) authority, which governs health risk reviews of air toxics sector rules.

The agency's Office of Inspector General (OIG) has urged EPA to reconsider these rules and tighten them, under fresh risk reviews using the 2016 IRIS value. Goffman in recent communications has rejected the OIG's recommendation, saying instead that the agency can mitigate remaining health risks using a related technology review authority.

And Carlton Waterhouse, the Biden administration's nominee to lead EPA's Office of Land and Emergency Management, agreed to NEJAC requests for greater community involvement in decisions over the Superfund cleanup program.

NEJAC in its letter found that while "Superfund cleanups have focused on preventing future exposure to hazardous chemicals, the program has not considered the long-term impacts on community health and economic opportunities for communities with environmental justice concerns that have been impacted by Superfund sites."

Waterhouse said EPA agrees with NEJAC that both remediation and redevelopment processes should be aligned, and the communities should be involved in decisions on both from an early stage. Responding to questions from NEJAC members, Waterhouse also said EPA will consider cumulative risks of combined exposures to multiple pollutants over time, an issue that cuts across EPA air, water, waste and other policy areas. -- Stuart Parker (sparker@iwpnews.com)

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EPA SEEKS ADVICE ON UPDATING DRINKING WATER QUALITY REPORTING

08/30/2021

Water Policy Report

August 16, 2021

EPA is seeking advice from a panel of drinking water experts on how the agency should revise a rule intended to make it easier for drinking water customers to understand annual reports on the levels of contaminants found in their water, after missing a statutory deadline last year for the revisions.

The effort follows litigation from the Natural Resources Defense Council (NRDC) asking a federal district court to require EPA "to issue the overdue revision to its regulations as soon as practicable."

The agency has identified four areas that it would like a working group of the National Drinking Water Advisory Council (NDWAC) to address in recommendations on how to revise the consumer confidence report (CCR) rule, with final advice from the working group expected to be approved by NDWAC at its annual meeting later this year.

In a charge to the CCR work group, EPA asks the advisors to address accessibility challenges, including translating CCRs and meeting Americans with Disabilities Act requirements; advancing environmental justice and supporting underserved communities; improving readability, understandability, clarity, and accuracy of information and risk communication of CCRs; and CCR delivery manner and methods, including electronic delivery.

EPA says the CCR rule is considered the centerpiece of public right-to-know for the Safe Drinking Water Act, with the reports providing valuable information about local drinking water quality to customers of community water systems.

The type of information in a CCR includes the source of the drinking water, a brief summary of the risk of contamination of the drinking water source, the regulated contaminants found in local drinking water, the potential health effects of any contaminant detected in violation of an EPA health standard, the accounting of the system's actions to restore safe drinking water, an educational statement for vulnerable populations about avoiding *Cryptosporidium* and educational information on nitrate, arsenic, or lead in areas where these contaminants may be a concern.

The 2018 America's Water Infrastructure Act (AWIA) mandated that EPA revise its requirements for CCRs by Oct. 23, 2020, in order to make the reports more accurate, readable and understandable, and to increase reporting frequency for many consumers.

Specifically, the law required a revised CCR rule to improve readability, understandability, clarity, and accuracy of CCRs; require biannual delivery of CCRs for large systems; and allow electronic delivery of CCRs. AWIA also amended SDWA section 1414(c)(4)(B) to require that community water systems include information on their corrosion control efforts and identify any corrective actions for lead action level exceedances in their CCRs.

The spring 2021 Unified Agenda of regulatory actions lists the CCR rule revisions as a long-term action without an estimated proposal or finalization date.

In an Aug. 10 update to the U.S. District Court for the Southern District of New York, NRDC and EPA say they have reached an agreement on the terms of a proposed resolution to the case *NRDC v. EPA*, subject to a governmental approval process that is currently underway, and ask for briefing deadlines to be extended by 60 days. The court granted the request the same day.

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EPA, CORPS AIM TO EASE STATE FEARS OVER TRUMP 401 RULE DURING REVIEW

08/30/2021

Water Policy Report

Posted August 20, 2021

EPA and the Army Corps of Engineers have issued a joint memorandum that seeks to ease some state concerns about the implementation of a Trump-era rule on state water quality certifications for federal permits while the Biden administration reworks it, giving states more time to certify dozens of Corps Clean Water Act (CWA) general permits.

The Aug. 19 memorandum acknowledges EPA is planning to revise the 2020 CWA section 401 rule but notes the need for additional clarity on the Corps' implementation of the Trump-era rule, which remains in place while the agency is exploring how to revise it.

"While EPA moves expeditiously to revise the 2020 rule, it is essential that the agencies address pressing implementation challenges that have been raised by our co-regulators," EPA Assistant Administrator for Water Radhika Fox said in an Aug. 20 statement. "Today's action provides guidance to maximize flexibilities and support the authority of states and Tribes to protect their waters."

The Trump EPA's 401 rule, which generally narrows how states evaluate whether federal permits protect state water quality standards, went into effect Sept. 11.

Days later, the Corps proposed changes to dozens of existing nationwide permits (NWP) as well as the creation of new

NWPs in a rule that was published in the Sept. 15 Federal Register.

The Corps, on Oct. 20, then began asking states to issue section 401 certifications for the draft NWPs within 60 days, relying on a Trump administration push to strictly implement existing Corps' regulations setting a 60-day deadline for most certification decisions.

But attorneys general (AGs) of Washington, California, Connecticut, Maryland, New Mexico, and Oregon charged in a May 11 letter to the Corps that the Corps' 60-day limit for states to certify dozens of draft NWPs was a misapplication of the 2020 rule.

The states raised concerns both about the challenge of certifying permits that were subject to change and the fact that some states' administrative processes for certification would take longer than the 60-day deadline.

The Corps in January finalized 16 of the proposed NWPs, but 41 other NWPs are currently undergoing White House review before publication.

CWA section 401 requires states to respond to certification requests within "a reasonable period of time" not to exceed one year, and the Trump-era rule leaves it up to the different federal permitting and licensing agencies to determine what a "reasonable period of time" is, either categorically or on a case-by-case basis.

Corps regulations issued prior to the 2020 EPA rule say most certifications should occur within 60 days but allow district engineers to give states up to a year if the circumstances indicate more time is needed. But the Trump administration pressed Corps districts and divisions to stick to the 60-day deadline, issuing formal guidance to that effect in 2019.

Remaining NWPs

With the new memorandum, EPA and the Corps agree the now-expired 60-day deadline to certify the still-pending NWPs was too short.

"In light of concerns noted by commenters and extensive recent feedback received from certifying authorities regarding the Corps' actions on certifications, including the Corps' application of EPA's 2020 Rule, the Corps will extend the reasonable period of time to the one-year statutory maximum for certification on the remaining 41 NWPs," the memorandum says.

"Although the Corps' regulatory default 60-day reasonable period of time has passed, as discussed in the Enclosure, neither the Corps' nor EPA's regulations limit the Corps to granting extensions only before the end of the regulatory default reasonable period of time," it continues.

The "enclosure" attached to the memorandum also addresses related implementation challenges with the 2020 rule associated with Corps-issued permits, including by directing the Corps to work collaboratively with states and tribes to identify factors and circumstances that warrant extending the reasonable period of time; resolve procedural deficiencies within the reasonable period of time; and identify and address circumstances that may appropriately require permit modifications.

The Corps believes extending the "reasonable period of time" beyond 60 days and up to the law's one-year limit will provide further opportunities for cooperation between states and the Corps, the memorandum says, adding that the Corps will send a notification to states indicating the new certification deadline for the remaining 41 NWPs and will provide the states with a draft final version of the NWPs.

States will have the option to issue new certifications on the remaining NWPs, although "previous certification decisions will govern in the absence of an updated certification or affirmative confirmation; inaction will not waive certification," the memorandum says.

The memo is drawing praise from some states, with Maryland Secretary of the Environment Ben Grumbles saying in an Aug. 20 statement, "We appreciate this important and timely step forward by EPA and the Army Corps of Engineers for clean water and states' rights."

And Laura Watson, director of the Washington state Department of Ecology said, "We appreciate our federal partners working with us and other states to find a path forward. There is more work to do, but when we work together, we can efficiently review projects that bolster economic activity and protect the environment." -- Lara Beaven (lbeaven@iwpnews.com)

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FEMA, other agencies in place for Ida | [View Clip](#)
08/30/2021
WCYB-TV Online

...in place in Louisiana and three more teams were in Alabama, FEMA said. Environmental Protection Agency spokeswoman Jennah...

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GOP STATES ASK D.C. CIRCUIT TO BLOCK BIDEN EPA'S DELAY OF SDWA LEAD RULE
08/30/2021
Water Policy Report

Posted August 25, 2021

A group of five Republican state attorneys general (AGs), led by Arizona, is urging a federal appeals court to temporarily block a Biden EPA rule delaying key deadlines in Trump-era revisions to the lead and copper drinking water rule (LCRR), though they also invite the court to vacate the delay given agency plans to soon decide on a rewrite.

"The Delay Rule is not just bad policy whose permanent harms will be largely borne by children. It is also profoundly unlawful," the AGs say in their opening brief in *Arizona, et al. v. EPA*, filed Aug. 24 with the U.S. Court of Appeals for the District of Columbia Circuit.

The AGs ask the court to stay the delay rule but say they "recognize that, given the timetable here, the effect of granting a stay pending review would be tantamount to a summary vacatur of the Delay Rule." Therefore, they say the court "may prefer to consider their arguments formally as such, and respectfully request summary vacatur in the alternative."

EPA in June delayed until Dec. 16 the effective date of the LCRR and extended the compliance date for the rule until Oct. 16, 2024, saying the extension is necessary to accommodate a thorough review of the rule and engage with a wide variety of stakeholders.

The agency has said it plans to make a final decision about the LCRR by Dec. 16.

The Association of State Drinking Water Administrators has supported the delay and outlined issues for EPA to consider in possible revisions to the rule. And Texas' regulators, whose attorney general is challenging the delay, in separate comments also supported the delay rule.

Environmentalists and Democratic AGs have sued EPA over the Trump-era revisions, arguing in part that the rule's action level of 15 micrograms per liter (ug/L), the lead service line replacement provision and sampling procedures do not prevent known or anticipated adverse effects on the health of persons to the extent feasible, as required by the Safe Drinking Water Act (SDWA).

The D.C. Circuit has stayed that consolidated litigation, *Newburgh Clean Water Project, et al. v. EPA*, until Jan. 22.

But the AGs from Arizona, Louisiana, Ohio, Oklahoma and Texas are seeking to implement the Trump rule, arguing the Biden delay violates the court's precedent and that the health of the states' residents is harmed by the delay.

The LCRR delay rule directly violates the D.C. Circuit's 2018 holding in *Air Alliance Houston v. EPA*, which scrapped the Trump EPA's rule delaying by almost two years implementation of Obama-era facility safety requirements due to Clean Air Act violations, "and does precisely what this Court prohibited: de facto repealing a rule through delays. But it suffers from multiple other legal deficiencies that also require invalidation," the AGs argue.

The D.C. Circuit in *Air Alliance Houston* "emphatically rejected" the Trump EPA's attempt to delay by two years implementation of the Obama-era Risk Management Plan rule, finding the agency "may not employ delay tactics to effectively repeal a final rule while sidestepping the statutorily mandated process for revising or repealing that rule," the AGs say, quoting in part from the 2018 ruling.

The appeals court should make the same finding again here since EPA has committed the very same legal violation --

attempting to kill an unwanted rule of a prior administration through serial delays rather than through formal repeal, the AGs say. Cost-Benefit Analysis

The Republican AGs say it "is undisputed that the LCRR would have tightened standards for lead and copper levels in drinking water," and that the effect of the delay rule is to restore prior, less-stringent standards.

"EPA also acknowledges that had the LCRR gone into effect there would have been material health benefits: in particular, reductions in the pernicious brain damage in children caused by lead in drinking water, and further that the Delay Rule will prevent those health benefits from being realized," they add.

Among the delay rule's alleged deficiencies is EPA's analysis of costs and benefits, the AGs say, beginning with EPA's own estimates that show the delay rule's costs appear to exceed the benefits.

"By begging -- but not answering -- the question of whether the Delay Rule imposes costs exceeding its benefits, EPA has violated both the [Administrative Procedure Act's (APA)] and the SDWA's explicit cost-benefit requirement," the states maintain.

Specifically, at a 3 percent discount rate, the value of health benefits foregone, of \$10 million to \$29 million, actually exceeds the economic costs avoided by delay, which are \$8 million to \$15 million, "thus violating both the SDWA's cost-benefit analysis requirement and engaging in quintessential arbitrary-and-capricious decision-making," prohibited by the APA, "by doing more harm than good (even under the agency's own rose-colored analysis)," the states say.

In contrast, at a 7 percent discount rate, the cost-benefit calculus is mildly positive, the AGs argue. "But EPA does not expend even a single word explaining why a 7% discount rate is superior to a 3% rate here, thus failing entirely to offer a reasoned explanation for its actions."

Given the nature of the harms, such as permanent injury to the brains of children causing life-long developmental issues, there are strong reasons to believe a lower discount rate is warranted, and EPA must do more than look at whether a rule does more harm than good. An agency must at least offer a reasonably convincing answer that it does not, the AGs say.

A second alleged deficiency in the delay rule's "putative *raison d'être*" of avoiding compliance costs on operators of drinking water systems if the LCR requirements are changed again, the brief says. "But EPA admits that the effect of the Delay Rule will be to replace the prior certainty of the LCRR with uncertainty, requiring operators to prepare for multiple contingencies," the AGs argue.

And it is axiomatic that it is more expensive to prepare for multiple contingencies than it is to prepare for one certain outcome, particularly where the former admittedly includes the possibility of the latter," they add. Thus, while the delay rule's putative purpose is to reduce compliance costs, EPA itself acknowledges that it is likely to increase them, they say.

Finally, the states argue the delay rule violates SDWA's requirement that EPA shall review and revise, as appropriate, drinking water rules every six years. The LCR was last revised in 2007, and neither the LCRR nor the delay rule documents any subsequent review since then, meaning EPA began violated the re-review mandate in 2013 and has continued to do so ever since, they say.

"The LCRR finally would have cured that long-standing violation of subsection (b)(9) by providing years-overdue review and revision. But the Delay Rule reinstates and exacerbates the pre-existing statutory violation, which is yet another basis for vacating it," the brief says.

The AGs argue they are likely to succeed on the merits of their arguments but add that all of the other factors necessary for the court to stay the delay rule are present.

"The States will suffer irreparable harm, both from permanent medical injuries to their residents and through irrecoverable financial harms, including Medicaid expenditures from those injuries and increased compliance costs from the Delay-Rule-imposed regulatory uncertainty," the AGs say. "The balance of harms/public interest further support issuance of a stay, particularly given the acknowledged adverse health impacts of the Delay Rule." -- Lara Beaven (lbeaven@iwpnews.com)

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GULF COAST INDUSTRIAL PLANTS FACE INCREASED SCRUTINY OVER EQUITY CONCERNS

08/30/2021

Water Policy Report

Posted August 19, 2021

Two Gulf Coast industrial plants are facing increased scrutiny over their potential adverse effects on local minority communities, underscoring the Biden administration's efforts to address concerns that such communities face a heavier pollution burden than other areas.

In a bow to several state attorneys general and environmentalists, the U.S. Army Corps of Engineers announced Aug. 18 that it will now require a full environmental impact analysis of a proposed massive petrochemical plant in St. James Parish, LA, citing in particular the need to review its environmental justice (EJ) implications.

Acting Assistant Secretary of the Army for Civil Works Jaime A. Pinkham says in an Aug. 18 memo that he is directing the Corps to prepare an environmental impact statement (EIS) under the National Environmental Policy Act for the proposed Formosa Group Chemical Plant "in order to assess the proposed project's potential impacts on the quality of the human environment in the region and to support its final decision to modify, reinstate, or revoke" a Clean Water Act (CWA) permit.

Pinkham adds that due to information he received and his commitment for the Army to be a leader in ensuring "thorough environmental analysis and meaningful community outreach, I conclude an EIS process is warranted to thoroughly review areas of concern, particularly those with environmental justice implications."

The Louisiana facility is only the latest Gulf Coast industrial plant to face EJ concerns. On the same day, environmentalists and civil rights groups in Texas petitioned EPA under Title VI of the Civil Rights Act to investigate whether Texas' approval of a clean air permit for a local coking plant violated the rights law.

The Port Arthur Community Action Network, represented by Lone Star Legal Aid and the Environmental Integrity Project, Aug. 18 petitioned EPA to investigate whether the Texas Commission on Environmental Quality (TCEQ) violated the rights law when it issued an umbrella air permit for the Oxbow Calcining plant, which manufactures a petroleum byproduct called petroleum coke that is used as a fuel and as an ingredient in metals.

The groups allege that TCEQ did this by issuing a Title V air pollution control permit to Oxbow without conducting an adequate new source review (NSR) to determine whether the permit's control requirements are adequate.

In addition to calling for a civil rights investigation, which can result in a withdrawal of federal funds, the petitioners also list a series of steps they want EPA to take to strengthen the facility's permit as well as Texas' permit program, including requiring the state to assess any disparate impacts from the permit, audit TCEQ's approval of the permit, collect data from the facility using air act enforcement authority and issue a new permit for the facility with strengthened "monitoring, recordkeeping and compliance terms" for the facility's sulfur dioxide and particulate matter emissions.

Such actions underscore the Biden administration's commitment to address the concerns, starting with the president's Jan. 27 executive order on climate change and environmental justice, which requires agencies to make "achieving environmental justice part of their missions by developing programs, policies, and activities to address

the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."

EPA and other agencies have sought to implement such requirements, with top officials issuing -- or planning to issue -- a series of memos and guidance documents that seek to implement such requirements.

For example, in April, EPA Administrator Michael Regan directed the agency to "clearly integrate" EJ into policy actions and other decisions while also bolstering enforcement of environmental and civil rights laws.

Agency officials have also said they plan to bolster existing guidance on its Title VI program. Gulf Coast

Any action officials take under these policies will almost certainly include the Gulf Coast, where the Formosa and Oxbow plants are located, given the areas' high concentration of petrochemical and other facilities.

Environmentalists and others have long charged that residents in fenceline communities in some parts of the region have a higher incidence of various cancers than others in part due to the high level of emissions though chemical

industry officials have disputed their claims.

As such, environmentalists are hailing the Corps' decision on the Formosa plant, calling it a "major victory" for opponents of the complex, which they say would include 10 chemical manufacturing plants and various support facilities, covering 2,500 acres.

"This long-overdue review will show the unacceptable harm Formosa Plastic's massive petrochemical complex would inflict on this community, our waterways, and our climate," Julie Teel Simmonds, a senior attorney at the Center for Biological Diversity (CBD), says in an Aug. 18 press release.

The decision comes after five Democratic attorneys general in May wrote to the Corps, demanding that it conduct a deeper analysis of the EJ, climate and wildlife impacts of the CWA permit for the facility.

They said such a reevaluation should necessitate preparation of an EIS, and said, "without such analysis, the Plastics Complex will inevitably produce adverse health, environmental and climate-related effects that will harm our States."

In the CBD press release, environmentalists say the complex -- which would turn natural gas and related products into ingredients for plastics -- would emit 13.6 million metric tons of greenhouse gases annually, equal to 3.5 coal-fired power plants, and would produce 800 tons of toxic air pollutants every year.

The facility would be in an industrial corridor known as Cancer Alley and would be near Black and low-income communities.

Environmentalists, who have sued over the project under the CWA, already succeeded in convincing the Corps last fall to suspend the permit. During the court challenge, the Corps told the court it would suspend the 2019 permit it issued under section 10 of the Rivers and Harbors Act and section 404 of the CWA, and would reevaluate alternatives, Pinkham says.

He says the proposal would impact about 62 acres of jurisdictional wetlands and 56 acres of other jurisdictional waters. - Suzanne Yohannan (syohannan@iwpnews.com)

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Hurricane Ida's rapid intensification spurred by climate change, bad luck | [View Clip](#)

08/30/2021

Axios

...behind Hurricane Ida's unnerving intensification rateAndrew FreedmanData: EPA; Chart: Sara Wise/Axios Hurricane Ida jumped from a 105-mph...

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INDUSTRY COALITION SEEKS MORE TIME FOR FEEDBACK ON WOTUS CHANGE

08/30/2021

Water Policy Report

August 26, 2021

A coalition of 45 organizations representing the construction, real estate, mining, agriculture, manufacturing, energy, and wildlife conservation sectors is asking EPA and the Army Corps of Engineers to extend by 60 days the comment period on possible changes to the definition of waters of the United States (WOTUS).

The current 30-day comment period, set to end Sept. 3, is not long enough for members of the Waters Advocacy Coalition "to submit informed and meaningful pre-proposal recommendations," the coalition says in its Aug. 10 request for a deadline extension.

"Limiting stakeholders' ability to comment will only compromise the agencies' stated goal of developing a definition that is durable and that can withstand judicial review and political pressure," the coalition adds.

EPA and the Corps announced July 30 that they were launching a series of meetings, comment sessions and other outreach to fulfill their promise to craft a "reasonable" WOTUS definition that reflects input from all stakeholders.

And in an Aug 4 Federal Register notice, the agencies seek feedback on nine specific aspects of defining WOTUS, including implementation; the scope of adjacency, jurisdictional tributaries and jurisdictional ditches; climate implications; environmental justice considerations and exclusions from the definition.

"Additional time for comment on these subjects is warranted to ensure that the agencies allow the public a meaningful opportunity to gather the relevant information and provide relevant feedback, the coalition says, adding that the 30-day comment period falls far short of the 90-day public comment period the Trump administration provided when it sought preproposal recommendations on potential approaches to defining WOTUS.

Several of the coalition's members filed individual requests for a 60-day extension, including the National Association of Home Builders (NAHB), which said having the public provide meaningful input requires similar time and consideration as previous attempts to define WOTUS.

"Indeed, gathering data and experiences and brainstorming recommendations for just one of these [nine] categories within a thirty-day window might be considered aggressive. Trying to address all of them in a meaningful way is prohibitive," NAHB says in its Aug. 5 letter.

And the American Exploration & Mining Association (AEMA) says that while some stakeholders may only be affected by one of the listed issues on which EPA and the Corps are seeking comment, its "members are affected by multiple, if not the full range of issues."

"Because of the number of issues EPA and Army Corps have identified for consideration; the stated goal to stop the oft-reversing pendulum of WOTUS revisions and craft a durable definition; and the existing precedent for extensions; we respectfully request that the comment period for providing pre-proposal recommendations be extended to a total of 90 days," AEMA says in its Aug. 12 letter.

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INDUSTRY URGES EPA TO DROP TURBIDITY MONITORING IN CONSTRUCTION PERMIT

08/30/2021

Water Policy Report

Posted August 17, 2021

Two broad industry coalitions are jointly urging EPA to drop plans for adding numeric turbidity monitoring to certain activities covered by a Clean Water Act (CWA) general permit for construction, warning the proposed monitoring value is more stringent than numeric turbidity limits EPA was forced to abandon in 2014.

In joint comments on EPA's proposal, the Federal Water Quality Coalition (FWQC) and the Federal StormWater Association (FSWA), whose members include manufacturing, construction, agricultural and municipal groups, take issue with having any type of numeric turbidity limits in the construction general permit (CGP) as well as the agency's proposed changes to regulation of dewatering activities, which stem from the draining of stormwater that has gathered, or ponded, at the site or groundwater that needs to be removed to make construction possible.

The "focus on dewatering throughout the permit appears to be inconsistent and at times illogical," the groups say.

Among other things, EPA's draft 2022 CGP added new monitoring requirements for turbidity in dewatering discharges. EPA staff have said that the requirements are important because unlike regular stormwater runoff, dewatering discharges are controlled and can involve large volumes of water and sediment, where the amount of sediment discharged from one dewatering event can be more than the total amount of sediment that comes from a site via stormwater during construction.

The CGP only applies in the three states where EPA is the National Pollutant Discharge Elimination System permitting authority -- Massachusetts, New Hampshire and New Mexico -- along with the District of Columbia and U.S. territories. But many states with delegated programs use the EPA permit as a guide for their own permits.

The agency has proposed two different turbidity monitoring approaches for dewatering discharges, including a

benchmark approach and an indicator monitoring approach, with EPA staff saying a growing number of states have dewatering requirements that are stricter than EPA's current approach. These state requirements include having numeric effluent limits, requiring effluent monitoring, and requiring daily inspections.

Under EPA's proposed benchmark monitoring approach, permittees would take turbidity samples on each day of discharge from their dewatering activities and compare the weekly average of the results with an established benchmark turbidity value, which EPA is proposing to be 50 Nephelometric Turbidity Units (NTU).

The weekly average would be reported to EPA once per quarter, and if the benchmark is exceeded, the operator would be required to conduct follow-up corrective action to determine the source of the problem and to make any necessary repairs or upgrades to the dewatering controls to lower the turbidity levels.

Under an indicator monitoring approach, permittees would still monitor the dewatering discharge for turbidity, however, no benchmark level would be set, nor would corrective action be required based on the turbidity results, the proposed permit says. The purpose of the information would be intended to provide operators and EPA with a baseline and comparable understanding of stormwater discharge quality, broader water quality problems, and stormwater control measure effectiveness at these sites. Dewatering Activities

But in their comments, the two coalitions criticize EPA's focus on dewatering activities. They note that EPA says it is proposing the monitoring mandates as water quality-based conditions for discharges to sensitive waters, but under its technology-based requirements for general dewatering, the agency is already proposing a "no visible turbidity" standard for dewatering discharges.

"Arguably, a no visible standard would exceed even a 50 NTU benchmark. The FWQC and FSWA cannot support either of EPA's proposed turbidity regulatory approaches," the comments say.

The coalitions have repeatedly questioned the value and efficacy of benchmarks and opposed the benchmark approach in comments on EPA's multisector general permit (MSGP) for industrial stormwater. The Biden EPA earlier this year published the 2021 MSGP after it was finalized at the end of the Trump administration under settlement deadline.

The final 2021 MSGP made some modifications to previous benchmark monitoring requirements, such as updated benchmark values for aluminum, copper, selenium and cadmium, but opted against universal benchmark monitoring for pH, total suspended solids (TSS) and chemical oxygen demand (COD) in all sectors. Instead, the MSGP requires all operators in subsectors that do not have sector-specific benchmark monitoring requirements to conduct indicator analytical monitoring for pH, TSS and COD. TSS is the main cause of turbidity.

The MSGP, in contrast with the CGP, covers a wide range of industry and a wide range of pollutants, and the issues with benchmarks the coalitions "raised relative to the MSGP are even more apt here where the permit covers only one type of activity with a limited number of potential pollutant discharges," the groups say.

EPA says that benchmark monitoring provides objective data, but the coalitions say the agency fails to explain why these data are meaningful or how use of those data translates to improved water quality. "Visual assessments, which detail the steps taken to address particular pollutant problems, are more effective in protecting water quality than rote monitoring once per quarter," the groups say.

Additionally, the technology-based effluent limitation guidelines (ELGs) for the construction and development (C&D) sector already includes appropriate best management practices for construction activities, the groups say. "Given that these technology-based standards exist, EPA has no basis to require corrective action based on benchmark values."

The groups note that EPA previously attempted to incorporate a turbidity limit of 280 NTU into the C&D ELGs in 2009, but several parties, including FWQC and FSWA members sued, identifying potential deficiencies with the dataset that EPA used to support its decision to adopt a numeric turbidity limitation.

The parties resolved the litigation in 2014 pursuant to a settlement agreement wherein EPA agreed to remove the turbidity limit entirely, and those ELGs have not included and do not currently include a turbidity limit.

"Given the fact that EPA could not justify the 280 NTU limit in the ELGs, there is no basis now to establish a benchmark value that is nearly 6 times more stringent," the CGP comments say. "Although the benchmark value is not a numeric limit, it can trigger corrective action. The [C&D] ELGs already set forth the technology-based standards that the Agency has determined are necessary and appropriate. The Agency has not justified the need for a benchmark program that may require corrective action beyond the requirements of the [C&D] ELGs." Water Quality-Based Condition

The coalitions also warn that "EPA cannot recast turbidity monitoring as a 'water quality-based' condition" because the permit sets forth the basic premise that compliance with the technology-based requirements presume compliance with water quality mandates. EPA has not established that sensitive waters require discharges at 50 NTU to meet their water quality standards or that all such waters are impaired for turbidity, the groups say, adding that in fact, many may flow at significantly above 50 NTU.

The coalitions also object to the proposed permit's prohibition of dewatering from a "contaminated site," saying that as a general matter they are concerned this could be interpreted to significantly expand EPA's authority beyond the purpose of the CGP.

"Not all dewatering activities result in a 'discharge' off site, and not all groundwater that might need to be 'dewatered' has come in contact with any construction activity or disturbed soils. Therefore, not all dewatering activities or even dewatering discharges (without contact) are regulated by the CGP," the comments say.

Additionally, the coalitions say EPA's concern with dewatering groundwater that has naturally occurring metals is misplaced. These metals are not the result of stormwater contacting disturbed land, so they are not and should not be the focus of the CGP program, the comments say.

Furthermore, they say the term "contaminated site" needs to be clarified so that it only applies to Superfund or Resource Conservation and Recovery Act (RCRA) sites. "EPA's proposed clarifying language for 'contaminated site' creates confusion and is potentially overly-broad," the comments say, adding that the phrase "existing or former remediation activities," should also be defined.

"Further, referring to Superfund or RCRA sites only by way of example, but not by way of definition, does little to narrow the potential breadth of the term 'contaminated site;' these need to be defined."

FWQC membership includes entities in the aluminum, agricultural, automobile, chemicals, coke and coal chemicals, electric utility, home building, iron and steel, mining, municipal, paper, petroleum, pharmaceutical, rubber, and other sectors.

FSWA is a group of industrial, municipal, and construction-related entities that include Airports Council International -- North America; American Petroleum Institute; Associated General Contractors of America; Association of American Railroads; Auto Industry Water Quality Coalition; Institute of Scrap Recycling Industries; National Association of Home Builders; Pavement Coatings Technology Council; and Western States Petroleum Association. -- Lara Beaven (lbeaven@iwpnews.com)

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Lacking Prior Bills, Democrats Scramble To Draft Low-Carbon Payments

08/30/2021

InsideEPA/Climate

August 27, 2021 Senate Democrats face the daunting task of developing a Clean Electricity Payment Program (CEPP), without the benefit of pre-existing legislation on the topic, in just a few weeks to serve as a core climate policy element of their emerging budget "reconciliation" package.

House approval Aug. 24 of a Senate-passed budget resolution for the \$3.5 trillion spending plan is allowing authorizing committees to begin drafting reconciliation legislation that will implement the bulk of President Joe Biden's climate and economic agenda.

Budget reconciliation procedures will allow Senate Democrats to bypass any GOP filibuster of the sprawling plan, but they limit legislation to provisions directly affecting federal revenues and spending.

The recent emergence of a CEPP as a crucial Democratic strategy for achieving deep utility sector greenhouse gas cuts has been driven by the legislative constraints of budget reconciliation. The program is intended to "mimic" the effect of a national clean energy standard (CES) by offering financial incentives to utilities that achieve their clean power targets while imposing penalties on those that fall short.

The Senate's leading proponent of a CEPP is Sen. Tina Smith (D-MN), who has yet to formally introduce legislation on the issue, though she proposed a CES bill in the last Congress.

The recently passed fiscal year 2022 budget resolution directs the Senate Energy and Natural Resources Committee to develop legislation for a CEPP, among other climate-related provisions. Overall, the committee was given \$198 billion for its portion of the bill.

Smith is working with the committee to ensure her proposal is included in the reconciliation bill, even though the details of the sweeping program are not yet publicly available.

"Sen. Smith has been working hard on the Clean Electricity Payment Program (CEPP), the program that is to be included in the reconciliation package," according to Smith's spokeswoman.

Senate Majority Leader Chuck Schumer (D-NY) sent an Aug. 25 "dear colleague" letter outlining the GHG reduction benefits of the anticipated reconciliation package and a separate roughly \$1 trillion bipartisan infrastructure bill.

Schumer identified a CEPP, combined with clean energy tax incentives, as contributing more than 40% of the total GHG reductions from the two pieces of legislation. Overall, his analysis said legislative action could provide the vast majority of the emissions cuts needed to achieve the Biden administration's 2030 goal under the Paris climate agreement.

As lawmakers develop the low-carbon tax incentives portion of the reconciliation package, they have multiple pre-existing bills to draw from, including legislation approved by the Senate Finance Committee in May, a separate proposal floated by House Democrats, and another proposal specific to electric vehicles floated by Schumer.

And while multiple lawmakers have introduced CES plans in recent years, legislation on an incentive-based version of that strategy has yet to publicly surface.

'Newer Policy'

Center for Climate & Energy Solutions President Nat Keohane, who was a climate policy advisor in the Obama White House, says an upcoming CEPP legislative proposal should seek to maximize GHG cuts and speed the retirement of fossil fuel-powered generators, with an emphasis on new investments beyond current market trends.

Keohane concedes a CES with enforceable standards would be the preferred climate policy option, but a CEPP offers the next best option given the constraints of reconciliation and the political realities of a divided Congress.

"I continue to think it's not a clean energy standard, which by its nature has an enforceable method," Keohane told Inside EPA's Climate Extra.

"So, it's a different kind of thing," he added, while acknowledging "the Senate will be doing as much as they can to be laying the groundwork and putting in place the kind of investments that are going to speed the clean energy transition and the transition to net-zero emission."

Keohane argued the newness surrounding a CEPP will require broad policy discussions despite the tight timeframe facing lawmakers, saying the policy does not have the same models as a traditional CES or a renewable portfolio standard (RPS), which utilities have been complying with for years at the state level.

"This is a newer policy, so I think it's going to be important for those policy discussions to broaden pretty huge so folks can really get a sense of what a good design looks like here," he said. "How are we going to do this to get the maximum emission reductions we can, and do that cost-effectively and flexibly," Keohane asked in laying out the challenge for lawmakers in developing a CEPP.

Also, industry lobbyists say they are anxiously awaiting legislative language for a CEPP. "I'm interested, and nervous, to see that gets included for clean energy payments," says a source representing companies investing in carbon capture technologies.

While Smith and other colleagues likely have been working behind the scenes on the issue, lawmakers only have the next few weeks to write and mark up the legislation. Authorizing committees in both chambers are facing a Sept. 15 deadline to submit legislation to their respective budget committees.

Democratic leaders have said they hope to pass both the bipartisan infrastructure plan and the broader reconciliation bill by the end of September.

Evergreen Memo

To provide advice for senators drafting CEPP legislation, the environmental group Evergreen Action issued an Aug. 18 "memo" on decarbonizing the power sector through the use of a CEPP as part of a "portfolio" of clean energy policies.

"A federal policy that mimics the impact of Clean Electricity Standard (CES) but is compatible with budget reconciliation - a Clean Electricity Payment Program (CEPP) -- would create hundreds of thousands of jobs and achieve an 80% clean electricity nationwide average by 2030," says the Evergreen plan in making its case to Senate Democrats for a filibuster-proof CEPP.

Under the group's vision of how the program would work, power generators, or load-serving entities (LSEs), would be required to use federal clean energy payments for specific investments to achieve emission goals set for each generator based on its current level of operations.

And the Evergreen proposal specifies how those payments should be used: "We propose the following: reducing customer bills; supporting clean electricity, including distributed generation and community solar; paying off debt on fossil assets; investing in distribution, transmission or storage; supporting energy efficiency programs; and/or worker paycheck protection," according to the Evergreen report.

Each LSE would be required to report the number of "clean" megawatt-hours (MWh) it generates or purchases and delivers to its customers in a given year, as a percentage of its overall demand load, in order to set the level of payments, or penalties, for achieving the payment program's emission targets.

"Each LSE must certify that no other entity is taking credit for the same MWh in their clean electricity determination," Evergreen report recommends. "In restructured markets, grid operators may set up an accounting system for LSEs to certify that no other entity is taking credit for the same clean MWhs."

The House has set a Sept. 27 deadline for voting on the \$1 trillion bipartisan infrastructure package, which the Senate approved Aug. 10. That deadline was set by the House-passed version of the FY22 resolution, linking final passage of both the broader reconciliation package and the bipartisan deal. -- Rick Weber (rweber@iwpnews.com)

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MAUI SEEKS RECONSIDERATION OF LANDMARK GROUNDWATER PERMITTING RULING

08/30/2021

Water Policy Report

Posted August 24, 2021

A Hawaii county is urging a federal district court judge to reconsider her landmark ruling last month requiring a wastewater treatment plant to obtain a Clean Water Act (CWA) permit to govern discharge of treated wastewater into its injection wells, arguing the first-time ruling contains numerous "manifest errors" of fact and law.

These errors resulted in a decision that re-establishes the "conduit theory" of when pollutants that travel through groundwater require a CWA permit, which the Supreme Court vacated in an April 2020 ruling in the case, the county argues in an Aug. 19 motion for reconsideration in Hawai'i Wildlife Fund, et al., v. County of Maui.

Judge Susan Oki Mollway of the U.S. District Court for the District of Hawaii ruled July 15 that the "discharge from the County's injection wells into the groundwater and ultimately into the ocean is the functional equivalent of a direct discharge such that it triggers the [National Pollutant Discharge Elimination System (NPDES)] permit requirement."

The judge's ruling is the first to apply the high court's 6-3 ruling in County of Maui v. Hawai'i Wildlife Fund, where Justice Stephen Breyer said the CWA requires an NPDES "permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge."

The high court outlined a seven-factor test for determining what is a "functional equivalent," although the Trump EPA issued 11th-hour implementation guidance for the Supreme Court ruling that added an eighth factor -- the design and performance of the system or facility from which the pollutant is released -- for consideration when conducting a functional equivalent analysis.

The Supreme Court remanded the case to the U.S. Court of Appeals for the 9th Circuit, which in turn remanded it to the

district court to apply the "functional equivalent" test.

But the county argues Mollway's decision makes manifest errors of law in the analysis of whether the particular discharge of treated wastewater from the Lahaina Wastewater Reclamation Facility (LWRF) is the "functional equivalent" of a direct discharge.

These alleged errors include positing a "raw-volume-of-pollutant" factor as functionally equivalent to a direct discharge based on an estimate of less than 2 percent of the treated wastewater from two wells at the facility and speculating on paths and time period for the emergence of 98 percent of fluorescein tracer dye injected as part of a 2013 groundwater study.

Other alleged errors are conflating the definition of "pollutant" in CWA section 502(6) by concluding the mass and/or volume of "wastewater as a whole is considered a pollutant" and reasserting the vacated "fairly traceable" standard by placing dispositive relevance on the fact that all groundwater ultimately reaches the ocean.

Finally, the county says, the district court erred by declining to give the Trump-era EPA guidance on the high court's ruling "due weight and authority, given the agency's experience and expertise, and the EPA's own historic involvement with the funding, design, development, and construction and permitting of the LWRF as a wastewater treatment and reclamation facility." Analysis Questioned

On the first alleged error, the county says Mollway's ruling expressly recognizes the Supreme Court's functional equivalent analysis is applied to the transmission path of groundwater from a point source, yet, the "raw-volume-of-pollutant factor" most heavily weighted in the order has nothing to do with, and does not involve any analysis whatsoever of, groundwater flow or transmission path from the LWRF to the ocean.

Rather, the "raw-volume-of-pollutant" test is a single-factor determination, and the ruling's analysis assumes seeps on the island are a conduit for all of the treated wastewater to enter the ocean, rather than making a relative comparison as to whether the initial volume of treated wastewater that is injected into underground wells is similar to or different from any direct discharge, the county argues.

"Given the U.S. Supreme Court's clear intention that the functional equivalent standard requires an analysis of groundwater flow and transmission, the Amended Order's estimate of the volume of 2 percent of the treated wastewater from wells 3 and 4 only after entering the ocean at the seeps, in-and-of-itself abrogates the analysis required pursuant to this standard, and is manifest legal error," the county says.

Underlying the "raw-volume-of-pollutant" determination is the assumption that groundwater in-itself serves as a conduit to carry from the LWRF wells to discharge at the seeps, which "tacitly, but unmistakably, resurrects the 'conduit theory' already vacated by the U.S. Supreme Court," the motion says.

The county also argues the ruling incorrectly speculates about the transmission and fate of 98 percent of the treated wastewater leaving LWRF, maintaining first that the ruling mischaracterizes data relating to 2 percent of the treated wastewater and then improperly applies those findings to the remaining 98 percent of the treated wastewater.

"To attribute these retention periods to the remaining 98 percent of treated wastewater from wells 3 and 4 is manifest factual error," the county says, adding that "[a]ny conclusion as to where and when the vast majority of treated wastewater from the LWRF will emerge is pure speculation, and not based on data, reliable science, or reliable evidence."

This means it is also manifest legal error to conclude that discharge of the vast amount of injected treated wastewater from the LWRF and its transmission to the ocean is the functional equivalent of a direct discharge, the county says.

Another factual and legal error, according to the county, is the ruling's determination that "wastewater as a whole" can be a "pollutant," with the county arguing this is inconsistent with the CWA's statutory definition of "pollutant" and is not workable under two of the seven factors the Supreme Court outlined in its functional equivalent test -- dilution/chemical change and the specific identity of the pollutant. 'Fairly Traceable' Standard

Additionally, the ruling's conclusion that 100 percent of the pollutant reaches the ocean resurrects the "fairly traceable" standard for determining when a CWA permit is needed, the county says. The 9th Circuit backed that standard in an earlier decision in this litigation, but the Supreme Court's ruling in the case vacated that approach, substituting the "functional equivalent" standard.

By resurrecting the "fairly traceable" standard, the district court has created the potential CWA liability exposure for

commercial users of reclaimed treated wastewater from the LWRF, the county says.

"Not only is this formulation therefore manifest legal error as over broad, it has the very real potential to discourage reuse of reclaimed treated wastewater -- the very alternative to injection that Plaintiffs claim to want in this case," the county says.

Finally, the county says that "given the consideration of this case as a matter of first impression for the judiciary, it appears as manifest legal error for the Amended Order to simply discount the EPA's Guidance Memorandum as 'not add[ing] anything to the analysis in this case,' and as 'play[ing] no role in this case.'"

The guidance reflects EPA's previous experience with hundreds of thousands of NPDES permits, which is clearly not "ordinary knowledge," and also reflects the agency's historical experience and actual involvement in the funding, design, construction and permitting of the LWRF as a water reclamation facility, the county says.

While the EPA guidance is not binding on the public, it "certainly has authority and relevance for local regulatory and permitting agencies that are now tasked all over the country with applying the Clean Water Act to groundwater discharges in light of the U.S. Supreme Court's current Maui decision," the county argues.

"On this basis alone, it seems a manifest legal error to simply set the Memorandum aside because, as Plaintiffs would questionably have the court believe, it is purportedly going to be rescinded," the county continues.

Mollway Aug. 23 set a Sept. 10 deadline for the Hawai'i Wildlife Fund to respond to the county's motion, with an optional reply brief from the county due Sept. 17. Mollway also set a video hearing on the motion for Oct. 12 but said she reserves the right to decide the motion without a hearing after reviewing the briefs. -- Lara Beaven (lbeaven@iwpnews.com)

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NWEA ASKS COURT TO MANDATE EPA-DEVELOPED WASHINGTON TOXICS CRITERIA

08/30/2021

Water Policy Report

August 24, 2021

Northwest Environmental Advocates (NWEA) is asking a federal district court judge to find that EPA's denial of the group's 2013 petition seeking new aquatic life water quality criteria for Washington state was arbitrary, capricious and contrary to the Clean Water Act (CWA) after the judge earlier this year rejected the agency's bid to dismiss the case.

The U.S. District Court for the Western District of Washington should find that EPA's 2017 denial of the 2013 petition "was arbitrary, capricious, and contrary to the CWA, and should vacate that denial and remand to EPA to make a new decision," NWEA says in an Aug. 20 motion for summary judgment in NWEA v. EPA.

"Given the ongoing threats to Washington's aquatic species, the Court should order EPA to make that new decision within 180 days of its Order granting NWEA's motion," the motion continues.

NWEA says in the filing that many of Washington's aquatic life criteria -- which regulators use to set water quality standards to protect killer whales, salmon and other species -- have not been updated in decades, even as EPA has recommended more stringent toxics criteria.

"Both Washington and EPA have recognized the need to reduce toxics in Washington's waters in order to protect aquatic species," the motion says. "Yet the state continues to delay reviewing and updating its criteria, and EPA has allowed the state's inaction to undermine the very foundation of the CWA's regulatory framework--a framework intended to ensure that adequate criteria are in place to protect these sensitive species."

NWEA petitioned EPA in 2013 to use its authority under CWA section 303(c)(4)(B) to make a determination that new and updated aquatic life criteria for toxic pollutants are necessary in Washington to meet the requirements of the CWA and to promulgate new and revised criteria for Washington.

EPA denied the petition in May 2017, providing several rationales for its decision, but NWEA says none is reasonable or grounded in the statute.

The Trump EPA sought to dismiss the litigation, but Judge Marsha Pechman in a June 1 order denied EPA's motion for dismissal, saying NWEA has "persuasively" demonstrated the court has authority to review the denial.

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...in place in Louisiana and three more teams were in Alabama, FEMA said. Environmental Protection Agency spokeswoman Jennah...

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SAN FRANCISCO ASKS 9TH CIRCUIT TO VACATE EPA PERMIT OVER CSO CONCERNS

08/30/2021

Water Policy Report

Posted August 26, 2021

San Francisco is asking the U.S. Court of Appeals for the 9th Circuit to vacate an EPA-issued Clean Water Act (CWA) discharge permit for the city in a case that could determine if the agency can set narrative permit limits and require municipalities to update their sewer overflow plans.

In its Aug. 25 opening brief in *City and County of San Francisco v. EPA*, the California city says several provisions in the permit threaten to undermine the city's investments in efforts to reduce combined sewer overflows (CSOs) and are at odds with the agency's nondiscretionary duties.

The contested permit provisions unlawfully create confusion about what additional investments it must make, if any, to comply with the CWA, and if upheld, they would absolve EPA from ever having to set discharger-specific limits to protect water quality, the city says.

The appeal to the 9th Circuit follows a decision from EPA's Environmental Appeals Board (EAB) late last year that found San Francisco had failed to meet its burden to win the board's review of the water quality standards (WQS) and CSO provisions.

The dispute has drawn national attention, with the National Association of Clean Water Agencies telling the EAB that without review of the permit, other communities with combined sewer systems, as well as entities permitted under the CWA National Pollutant Discharge Elimination System (NPDES), would face similar burdens.

Specifically, the city takes issue with the permit's narrative prohibition against causing or contributing to a violation of any WQS and its requirements to update a long-term control plan (LTCP) to prevent CSOs.

EAB backed the narrative prohibition against violating any WQS, pointing to the board's previous ruling upholding a similar provision in an NPDES permit challenged by Lowell, MA.

But San Francisco argues the provision makes ambient WQS directly enforceable against the city, contrary to the CWA's requirement that EPA translate these standards into concrete, individualized permit terms.

"By imposing the Generic Prohibitions, EPA abdicated its duty to set concrete permit terms prescribing pollution levels or operational requirements that achieve compliance with WQS," the city argues.

And without clear benchmarks for how to discharge consistent with WQS, the city will be forced to invest in pollution controls without any assurance these investments will actually result in compliance, it continues. "Worse yet, EPA took this action despite a court of appeals decision that struck down similar permit terms because they failed to inform dischargers what they must do or cannot do in order to comply with WQS."

The city's brief refers to the 2nd Circuit's 2015 decision in *Natural Resources Defense Council v. EPA*, which held that

the agency's 2013 vessel general permit violated the CWA, in part because it exempted ships that travel exclusively in the Great Lakes from technology-based effluent limits and set a narrative standard for water quality-based effluent limits (WQBELs).

San Francisco maintains that EPA's permitting regulations prescribe a process for setting discharger-specific WQBELs to protect WQS and contests EPA's position that it has discretion in how it sets effluent limits.

EPA's position "would absolve the Agency from ever again having to set discharger-specific limits to protect water quality," but the CWA and its implementing regulations "afford the Agency no discretion to leave San Francisco in the dark about how to comply with the Act and WQS," the city says. Water Quality Limits 'Are Sufficient'

EPA's justifications for imposing terms that fail to specify how to comply with the CWA are threadbare and at odds with the record, the city says, arguing the agency mustered no record support for these assertions because it could not have done so.

"Data before the Agency show that San Francisco's WQBELs are sufficient to protect receiving water quality, contradicting EPA's claimed need to impose the Generic Prohibitions," the city says.

San Francisco also argues that the permit's requirement to update the city's LTCP is inconsistent with EPA's CSO policy. EPA's 1994 CSO Policy, which Congress later codified, outlines requirements for wastewater utilities to reduce CSOs, including developing an LTCP and requiring different types of permits depending on how much the utility has addressed the issue.

Most combined sewer systems are still implementing their LTCPs, typically pursuant to a consent decree. But San Francisco says it took steps to reduce CSOs long before EPA first developed its CSO policy and is a rare example of a combined sewer system that has fully built its collection system.

"The Agency's attempt to undermine the City's pollution controls also rests on the false premise that San Francisco's current controls are inadequate," the city says in its opening brief. "To the contrary, data in the record show San Francisco's program to be a success and EPA's actions to be arbitrary and capricious. These errors require that the Court vacate the permit and instruct EPA to comply with the Clean Water Act and its regulations on remand."

The permit's contested provisions threaten San Francisco's substantial investments in its CSO control program and fail to provide the city with clear direction on how to continue investing to ensure compliance with the CWA, the city says. Both the narrative prohibition on violating WQS and the requirement to update the LTCP "reflect EPA's failures to heed the CWA's limitations on its authority and the Act's implementing regulations," the city adds.

The CWA and CSO policy allow EPA to require LTCP updates only in narrow circumstances when the plan is not resulting in attainment of WQS, but these circumstances do not exist here, San Francisco says. "San Francisco's data indicate that its CSO controls protect receiving water quality."

"The Agency's demand that San Francisco re-do its LTCP and develop new controls rests on EPA's apparent discomfort with the age of the City's plan, which dates back to the 1970s," the city's brief says. But the CWA does not allow EPA to upset San Francisco's compliance and capital planning efforts by invoking vague concerns that an LTCP might be outdated, it adds.

The CWA only allows EPA "to send San Francisco back to the drawing board when an LTCP's performance is shown to be inadequate by post-construction monitoring data," something that has not happened here, the city says. EPA cannot use its concerns about the age of the city's LTCP to force San Francisco to spend public money on additional, unnecessary CSO controls, the city maintains.

The NPDES permit at issue was issued jointly by EPA Region 9 and California because some of the discharges are to waters under California's authority and some are to the ocean, which is under EPA's authority. Before the EAB, EPA argued the permit is actually two separate NPDES permits, with one issued by the state and one issued by EPA.

San Francisco says EPA took this position to preserve its ability to enforce the contested provisions even if they were invalidated, but this "fiction cannot be squared with the Permit's text or its administrative record. The Court must fashion its relief to prevent EPA from undermining the Permit's vacatur." -- Lara Beaven (lbeaven@iwpnnews.com)

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...within "heat islands," or areas that are pockets of heat. According to the Environmental Protection Agency, causes can include...

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Democrats Seek To Curb High-Emitting 'Peaker' Plants In Reconciliation Bill

08/29/2021

InsideEPA/Climate

August 27, 2021 House Democrats are seeking to include measures to address high-emitting "peaker" power plants in the package of environmental and other measures they include in any budget reconciliation legislation lawmakers are poised to write in the coming weeks, arguing such measures are needed to limit harmful exposures in overburdened communities.

Speaking on an Aug. 26 roundtable in Astoria, NY, Democratic members of the House Oversight and Reform Committee spoke out on the dangers to health caused by peaking plants, which are fossil-fueled plants that typically only run during periods of high electric demand, such as hot summer days already conducive to high levels of ozone and other air pollution.

The roundtable highlighted concerns New York Democrats and community activists have as they seek to prevent utility NRG from converting an oil-fired peaking plant in the community to natural gas, which they say would prolong its lifespan and contribute more pollution to an area already overburdened by emissions from peaker plants and other sources.

Rep. Ro Khanna (D-CA), chair of the committee's environment panel and a co-sponsor of House legislation on peakers, told the panel "we look forward to working with you on the reconciliation bill to make sure the peakers issue is addressed, to the best we can."

Khanna is also deputy whip of the Congressional Progressive Caucus.

His comments come as Democrats in the House and Senate are poised to begin writing legislative provisions for their massive \$3.5 trillion infrastructure package, which is slated to advance using streamlined reconciliation procedures that can avoid a Senate filibuster.

That process is beginning after House Democrats earlier this week approved a budget resolution, a blueprint that unlocks the reconciliation procedures.

Following the House vote, Speaker Nancy Pelosi (D-CA) emphasized that House Democrats plan to include aggressive measures to address climate change and other issues in the reconciliation bill.

The reconciliation bill will be "addressing the climate crisis in a way that was not addressed at all in the [bipartisan Senate] infrastructure bill -- very minor, just electrification, and just other [issues] -- electrification is important, but it is not the totality of what we have to do," Pelosi said during her weekly press conference Aug. 25.

Other Democrats, like Rep. Donald McEachin (D-VA), have also pledged to include measures to address environmental justice in any reconciliation package.

Such pledges leave the door open to addressing peaker plants. For example, several House Democrats on the oversight panel are promoting a bill, H.R. 3139, which would create tax incentives to replace peaker plants with renewable energy and energy storage, and also create a \$1 billion annual grant program to enable expansion of renewable energy generation and storage to replace peaking plants from 2022 to 2032.

'Important Steps'

Rep. Yvette Clarke (D-NY) introduced the bill May 12, and it currently has 14 co-sponsors, including Khanna and seven lawmakers from New York.

Sen. Kirsten Gillibrand (D-NY) has also introduced a companion Senate measure, S. 1553, along with co-sponsors Sens. Chris Van Hollen (D-MD) and Dianne Feinstein (D-CA).

When the bill was first introduced earlier this year, it won praise from the Environmental Defense Fund (EDF), who praised the "important steps" the bill would take to "replace these toxic plants with clean energy sources."

Peaker plants "are inefficient and spew pollution that increases the risk of serious heart and lung disease. Many of these plants are located in communities of color, low-income communities and other communities already overburdened from other sources of local air pollution," the group said in a May 16 statement.

In addition, air regulators in East Coast states have frequently identified peaker plants as a significant source of nitrogen oxide (NOx) that contributes to ozone exceeding federal limits, along with "behind the meter" diesel generators also used to meet high electricity demand.

Some have called on EPA to impose daily NOx emissions limits on power plants on high electric demand days in order to mitigate the additional emissions, but the agency has declined to do so. Also, the Ozone Transport Commission of 12 Northeastern and Mid-Atlantic states is considering possible ways that states could regulate peaking plants.

During the roundtable, committee Chair Carolyn Maloney (D-NY) said that the high concentration of peaker plants in certain overburdened communities "is killing people, and we have to stop it," citing 89 peaker units in New York City alone. "We have the technology to make it happen," Maloney said.

On the federal level, Maloney called for passage of H.R. 3139, and also of H.R. 2021, an environmental justice (EJ) bill by Rep. Raul Grijalva (D-AZ) that would require federal agencies to consider the cumulative impacts of pollution on communities, Maloney said.

Maloney further called for more use of local air quality monitoring to better inform local communities of their pollution levels, using low-cost sensors to supplement the network of regulatory air monitors.

Several speakers including Rep. Alexandria Ocasio-Cortez (D-NY) underscored their opposition to peaker plants, which they said are much dirtier and also much more expensive per unit of power produced than other sources of generation.

Peakers produce twice as much carbon dioxide and up to 20 times as much NOx as other power plants, Ocasio-Cortez said, and "we believe there is a better way."

Peaker plants rarely run, yet the cost to ratepayers to retain them for peak demand periods runs into the billions, and that money would be better invested in renewable energy and energy storage, speakers at the meeting said. Nor should oil-fired peakers convert to natural gas fuel, as fracked gas "is not the way" and "skyrockets methane emissions," said Ocasio-Cortez.

In addition to providing tax incentives to replace peakers, H.R. 3139 would also require the Department of Energy, in coordination with EPA, to conduct a study into the operations of peaker plants around the country, including their location, capacity, hours of operation, emissions rates, and proximity to air pollution monitors registering ozone or particulate matter (PM) levels in excess of federal air quality standards.

The bill would further create a DOE grant program for state and local governments, and community groups, to establish renewable energy projects and energy storage to replace existing or planned peaker plants. The bill would create a 10 percent tax credit for such projects. -- Stuart Parker (sparker@iwpress.com)

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EPA Faces Environmental, EV Sector Calls To Tighten Vehicle GHG Plan

08/29/2021

Inside Washington Publishers

Environmentalists and some industry groups are pressing EPA to tighten its proposed near-term vehicle greenhouse gas plan to spur more emissions cuts and possibly greater electric vehicle (EV) adoption than the agency's preferred option, highlighting the pressure officials face to write ambitious standards.

The groups' appeals, raised at EPA's Aug. 25-26 public hearing on its proposed update to model year 2023-2026 rules, come as outside observers and the agency itself cite the rules as just a first step toward stricter rules.

Many comments from the hearing show general support for strengthening standards rolled back by the Trump

administration as well as skepticism of proposed compliance flexibilities many groups argue could undercut the GHG benefits of the standards.

"EPA must maximize the pollution reductions, minimize the loopholes, and finalize the rule this year," said Paul Billings, the senior vice president for advocacy at the American Lung Association (ALA), in Aug. 25 remarks.

Such criticisms align with recently unveiled concerns that the Office of Management and Budget told EPA officials during internal review of the proposal that it may not be strict enough.

Early reaction from major automakers included expected Aug. 26 testimony from the trade group Alliance for Automotive Innovation saying it "supports the goals of EPA's GHG program" but calls for a "comprehensive national strategy" including "state, local and federal investments" to enable the transition to EVs.

Officials from Ford, Hyundai and other automakers were also scheduled to address the Aug. 26 session.

ALA's Billings was the first witness at a proceeding in which numerous environmental and public health groups questioned "loopholes" in the proposal they claimed could erode the program's stringency.

Multiple environmentalists urged EPA to adopt a final rule at least as stringent as the plan's "alternative 2" that would adhere more closely to Obama-era standards than the agency's default. Some specifically also referenced EPA's separate request for comment on toughening the requirement in MY26, which would result in a GHG standard 5 to 10 grams per mile (gpm) lower in that year than the agency's preferred option, reflecting the potential for quicker deployment of EVs than expected in EPA's default plan.

One source familiar with the issue says environmental groups prior to the proceeding appeared to reach a degree of consensus in support of alternative 2, as well as the related push for a tighter MY26 standard.

In this vein, Billings' testimony encourages "EPA to pursue, at a minimum, the stringency laid out in Alternative 2, and remove excess crediting and loopholes that will work to reduce the real-world benefits of this more health-protective alternative."

Natural Resources Defense Council (NRDC) staff scientist Vijay Limaye in Aug. 25 testimony likewise urged that EPA finalize a rule "at least as stringent as alternative 2" and argued that the net benefits of stronger car rules are "even higher than those currently estimated by EPA," citing a peer-reviewed analysis he co-authored on health costs from climate change not necessarily factored into EPA's plan.

NRDC also noted that EPA's "stronger alternative would achieve between \$8 billion and \$16 billion more net benefits than the preferred proposal over the lifetimes of MY23-26 vehicles," the group said in a blog post.

Center for Biological Diversity staff attorney Scott Hochberg also called for tougher rules and criticized the EPA proposal as falling far short of needed ambitions and jeopardizing longer-term GHG cuts. But he acknowledged the alternative 2 and MY26 options in EPA's plan as "closer to the mark" of what needs to happen.

EV Sector

Adding to the support for a stricter rule were additional voices from industry, including Plug In America, an association of EV drivers, as well as electric truck maker Rivian.

"Given the choices, we would advocate for alternative number 2 from the proposal, although we are concerned that it is not nearly ambitious enough," Plug in America Executive Director Joel Levin said.

Levin said EPA's estimate that its rule would result in an 8 percent EV penetration rate by 2026 is "simply too cautious" of a goal, given the vehicles' roughly 4 percent market share estimated for MY21.

"We urge the EPA to go beyond these alternatives and establish standards that aim for a 25% EV market share for 2026, which would put us on track to achieve 100% EV market share by 2035, as many countries and a number of U.S. states have already committed to," he said.

Rivian's public policy director Chris Nevers in prepared remarks added that EPA's near-term plan "leads in the right direction," but he also endorsed alternative 2, while flagging concerns over several compliance flexibilities in the proposal as delaying progress toward the administration's goals. He specifically flagged EPA's proposal to extend credit "multipliers" for EVs and other advanced technology vehicles.

"[P]erhaps counterintuitively, we recommend not extending the credit multiplier for advanced technology vehicles. This multiplier is no longer needed and weakens the stringency of the program as a whole by double-counting emissions reductions," Nevers argued.

The potential for EV credit multipliers to slow, rather than speed, deployment of EVs is also coming up in other venues, including research by Yale University economist Kevin Gillingham suggesting that such multipliers could reduce EV sales.

"[C]ounting electric vehicles under a standard with a multiplier or assuming zero upstream emissions can reduce electric vehicle market share by weakening the standards," Gillingham writes in a May paper.

That conclusion appears to be at odds with EPA's regulatory analysis suggesting that the multipliers would actually encourage more EVs than if such credits were omitted from the rule.

Other flexibility provisions Rivian cites as potentially problematic include EPA's proposal to expand from 10 to 15 gpm the allowed use of certain off-cycle emissions credits, and a proposed extension of the lifetime of other compliance credits that would otherwise expire under the program.

Environmental Law and Policy Center federal legislative director Ann Mesnikoff added during the hearing that "excessive technology credits and loopholes allow automakers to stall gasoline vehicle improvements and will fail to significantly boost the electric vehicle market given automakers' announced plans."

Compliance Credits

But the hearing showcased splits on the off-cycle credit issue, with the Manufacturers of Emissions Controls Association (MECA) Executive Director Rasto Brezny saying his group "supports EPA's continuation of the off-cycle credit program at a higher credit cap in order to provide the benefit of verifiable, real-world CO2 reductions and allow us to reduce GHG emissions by all technological means."

MECA broadly embraces stronger vehicle GHG standards to keep pace with global markets, arguing Trump-era rollbacks put the U.S. "behind other strong auto manufacturing regions like Europe and China."

The group also urges that EPA "continue to improve and expand the off-cycle program by sharing data and resources with [the Department of Transportation and California] as well as adding a supplier-initiated process for conditional credits like that included in the California framework" agreement with several automakers.

The hearing comes as Bloomberg recently flagged some internal Biden administration criticism that EPA's plan might not be stringent enough, suggesting that backers of a stronger plan might be able to leverage the public comment process to win stronger provisions.

Among the issue flagged during interagency review of the plan by one administration official was the potential for the multiplier credits to "counter-intuitively, reduce EV penetration" into the market, according to the report, the same issue Rivian referenced.

The report also more broadly cites OMB feedback to EPA that "most reviewers suggested considering a more stringent proposal," than what EPA chose as its preferred option.

But it remains to be seen how hard the Biden EPA will push in its near-term rule, with even some backers of stringent standards suggesting that the rule should not delay action on still-tougher long-term requirements.

"EPA's top priority must be a post-2026 rule to establish a clear regulatory requirement to achieve near 100 percent zero emissions car and light truck sales by 2035," said former EPA official Jeff Alson in Aug. 25 testimony on behalf of the Environmental Protection Network. The group "strongly supports" the proposed near-term standards as the "minimum" foundation for subsequent regulations. "Any changes should be in the direction of more, not less stringent, standards."

Consulting firm ClearView Energy Partners in an Aug. 25 analysis suggests a number of factors, including the agency's discussion of limited lead time for its proposal, as a potential sign EPA would finalize its proposed standard, rather than alternative 2 or a separate alternative 1 that would be weaker than its default plan and largely echo the top-line requirements of California's Trump-era deal with auto companies.

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central proposal," ClearView wrote.

However, the hearing also featured testimony from state officials suggesting that EPA should err on the side of stringency in its vehicle rule.

"EPA should quickly act on this proposal and adopt the most stringent alternative, while working to recognize progress leading companies have made," said California Air Resources Board Chairwoman Liane Randolph.

Northeast States for Coordinated Air Use Management representative James Flynn likewise called strong national standards "a critical building block" for state efforts to accelerate the EV transition, urging swift adoption of the "most stringent GHG emissions standards" feasible for light duty vehicle through MY26 and quick action on future rules. -- Doug Obey

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EPA Faces Environmental, EV Sector Calls To Tighten Vehicle GHG Plan

08/29/2021

InsideEPA/Climate

August 25, 2021 Environmentalists and some industry groups are pressing EPA to tighten its proposed near-term vehicle greenhouse gas plan to spur more emissions cuts and possibly greater electric vehicle (EV) adoption than the agency's preferred option, highlighting the pressure officials face to write ambitious standards.

The groups' appeals, raised at EPA's Aug. 25-26 public hearing on its proposed update to model year 2023-2026 rules, come as outside observers and the agency itself cite the rules as just a first step toward stricter rules.

Many comments from the hearing show general support for strengthening standards rolled back by the Trump administration as well as skepticism of proposed compliance flexibilities many groups argue could undercut the GHG benefits of the standards.

"EPA must maximize the pollution reductions, minimize the loopholes, and finalize the rule this year," said Paul Billings, the senior vice president for advocacy at the American Lung Association (ALA), in Aug. 25 remarks.

Such criticisms align with recently unveiled concerns that the Office of Management and Budget told EPA officials during internal review of the proposal that it may not be strict enough.

Early reaction from major automakers included expected Aug. 26 testimony from the trade group Alliance for Automotive Innovation saying it "supports the goals of EPA's GHG program" but calls for a "comprehensive national strategy" including "state, local and federal investments" to enable the transition to EVs.

Officials from Ford, Hyundai and other automakers were also scheduled to address the Aug. 26 session.

ALA's Billings was the first witness at a proceeding in which numerous environmental and public health groups questioned "loopholes" in the proposal they claimed could erode the program's stringency.

Multiple environmentalists urged EPA to adopt a final rule at least as stringent as the plan's "alternative 2" that would adhere more closely to Obama-era standards than the agency's default. Some specifically also referenced EPA's separate request for comment on toughening the requirement in MY26, which would result in a GHG standard 5 to 10 grams per mile (gpm) lower in that year than the agency's preferred option, reflecting the potential for quicker deployment of EVs than expected in EPA's default plan.

One source familiar with the issue says environmental groups prior to the proceeding appeared to reach a degree of consensus in support of alternative 2, as well as the related push for a tighter MY26 standard.

In this vein, Billings' testimony encourages "EPA to pursue, at a minimum, the stringency laid out in Alternative 2, and remove excess crediting and loopholes that will work to reduce the real-world benefits of this more health-protective alternative."

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higher than those currently estimated by EPA," citing a peer-reviewed analysis he co-authored on health costs from climate change not necessarily factored into EPA's plan.

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EPA Faces Legal, Political Doubts Over RFS Plan To Cut Biofuel Volumes

08/29/2021

InsideEPA/Climate

August 27, 2021 EPA is facing difficult legal and political questions over its plan, recently submitted to the White House for review, to reduce biofuel blending volumes required under the renewable fuel standard (RFS), especially its reported effort to reduce volumes not only for 2021 but also retroactively for 2020.

EPA Aug. 26 sent its long-delayed proposal to set 2021 blending volumes to the White House Office of Management and Budget (OMB) for pre-publication review, according to OMB's website.

EPA is also expected to propose its volumes for 2022, which by law must be finalized by Nov. 30.

EPA said in a statement that the proposal aims to get the RFS "back on track while addressing challenges stemming from decisions made under the prior administration."

Various news outlets including Reuters are citing unconfirmed reports that the agency will not only reduce the 2021 volumes requirements below 2020 levels, because of a reduction in overall fuel demand during the COVID-19 pandemic, but may also retroactively cut volumes for 2020.

The agency may restore blending to higher levels for 2022, the reports suggest.

Cutting biofuel blending requirements would appease refiners seeking to lower their compliance obligations under the RFS, which requires them to blend increasing volumes of biofuels into the fuel supply each year unless EPA uses waiver authorities to reduce them from statutory levels.

GOP senators from oil-producing and refining states recently called for a general waiver of the 2020 obligations, citing economic hardship to refiners.

Specifically, reducing volumes for 2020 would help "merchant" refiners that do not blend their own biofuels and must comply with the program by purchasing RFS credits from others, as the price of credits would likely fall and supply increase, helping those that delayed buying credits.

But biofuels groups were swift to reject this idea. "EPA has repeatedly stated that it does not have the authority to go back in time and change RFS volumes that have already been finalized. And the Biden administration knows that reducing the 2021 and 2022 RFS volumes would derail the President's agenda related to clean energy, climate, and domestic manufacturing jobs. It would also mark a big step backward on the path to net zero GHG emissions by 2050," Geoff Cooper, president and CEO of the Renewable Fuels Association (RFA), said in a statement.

Yet EPA has informed a federal appeals court that it may reconsider the rule setting volumes for 2020 in light of recent litigation involving small refiner waivers, a key issue in the consolidated U.S. Court of Appeals for the District of Columbia Circuit case RFS Power Coalition, et al. v. EPA.

In the rule for 2020, EPA for the first time increased biofuel blending rates for refiners to compensate for dozens of small refinery waivers it then expected to issue.

Refinery Waivers

But to date, EPA has not granted any such waivers for 2020, and dozens of waiver requests remain undecided by the agency. Oil sector groups in the case are challenging this aspect of the 2020 RFS, among others.

The D.C. Circuit Aug. 19 stayed RFS Power until September 9 at EPA's request, to allow the agency to decide whether to launch a reconsideration of the 2020 RFS. "If EPA decides that reconsideration is appropriate, then that reconsideration could narrow or moot issues that the Court would need to decide in this case," EPA said in its July motion for continued abeyance.

The court's order responded to EPA pleas for more time to determine the implications of the Supreme Court's June 25 ruling in *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, where the high court upheld small refiners' ability to win RFS compliance waivers if they have not held a continuous line of such waivers previously.

The high court's ruling reversed a 10th Circuit decision on the waivers issue, but it did not address other arguments the 10th Circuit made in rejecting three EPA waivers for small refineries, such as that EPA failed to explain sudden changes in its prior stance that refiners pass on the costs of RFS compliance to their customers, or that waivers must be granted only on the basis of economic hardship traceable directly to the RFS.

ClearView Energy Partners, an independent research firm, in an Aug. 27 research note suggests that setting RFS volumes for 2021 at levels of biofuel actually consumed would be an easier prospect than retroactively reducing volumes for the 2020 compliance year. This is because, in the company's view, EPA is unlikely to finalize the 2021 regulation until early next year.

But ClearView also cites a political motivation, saying, "the White House may be particularly concerned about American drivers and how fuel costs could pose risks to thin Congressional majorities ahead of the 2022 mid-term elections. A policy stance to raise blending requirements could hand Biden's critics an argument that his Administration is contributing to higher fuel costs."

ClearView sees more scope, politically, for a rise in RFS volumes for 2022, assuming a continued economic recovery. "Congressional swing seats in play in the mid-term elections appear to be disproportionately levered to biofuels. Should the Administration feel biofuels policy could help win tight mid-term races, higher blending targets may reassure biofuel

stakeholders about the Democrats' commitment" to the sector.

With respect to retroactively reducing the volume for 2020, ClearView says, "writing down [compliance year, or CY] 2020 obligations seems a more challenging proposition than basing CY 2021 on actuals. CY 2020 percentage standards were set prior to the pandemic, so the effective blending requirement fell with fuel demand. The EPA has a long-standing practice of maintaining percentage standards once finalized, even if fuel market conditions prove different than expected."

Biofuels groups are often swift to point out this feature of the RFS -- volumes are translated into percentages of blending that refiners must meet. If refiners sell less fuel overall, their compliance obligations for biofuel blending are also reduced.

Further, "a retroactive change to the standard might require a higher evidentiary bar to survive judicial review" than a reduction in 2021 volumes relative to 2020, ClearView says. -- Stuart Parker (sparker@iwpnews.com)

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EPA readies plan to lower RFS biofuel volumes

08/29/2021

InsideEPA/Climate

August 23, 2021 EPA is close to sending its overdue proposal setting biofuel blending volumes under the Renewable Fuel Standard (RFS) for 2021 to the White House for pre-publication review, with recent reports indicating the plan may reduce blending volumes for this year in response to lowered fuel demand due to the COVID-19 pandemic.

By law, EPA must set final volumes by Nov. 30 each year for the following year, but the agency has yet to even propose volumes for 2021, citing difficulties predicting fuel demand as one reason for the delay.

The agency has also faced litigation on a series of issues, resulting in a major Supreme Court ruling supporting continued issuance of small refinery waivers from RFS compliance that may influence the blending rule, as well as ongoing legal action in the U.S. Court of Appeals for the District of Columbia Circuit on various waiver and volumes-related topics.

According to reports by Reuters and other outlets, EPA is poised to send the 2021 proposed volumes to the White House Office of Management and Budget (OMB), the final step before publication, along with a proposed volume for 2022.

EPA may lower volumes for 2021 relative to 2020 levels, but boost them again for 2022, these reports suggest.

"I'm disappointed to hear the EPA is planning to lower the minimum required renewable fuels volumes for this year. If the reports are true, then once again, the EPA is giving a gift to Big Oil and is playing games with the Renewable Fuel Standard law," said Sen. Charles Grassley (R-IA), a long-time biofuels advocate, in an Aug. 20 statement.

"President Biden must keep his promise to biofuels producers to limit welfare to Big Oil, and promote greater reliance on renewable fuels. The President has the opportunity to ensure that his EPA follows the law to maintain and grow the amount of biofuel[s] that are required to be blended," Grassley added.

One of the key issues EPA must decide in setting blending volumes is whether to increase blending rates to compensate for small refinery waivers it anticipates it will issue.

The refining sector opposes the practice, while the biofuels sector supports it. This issue is under litigation in the consolidated lawsuit RFS Power Coalition v. EPA, now before the D.C. Circuit.

EPA did this for the 2020 volumes for various categories of biofuel but has so far not issued any such economic hardship waivers for 2020, even as pressure mounts.

For example, small refiner Delek Aug. 20 sued EPA in the U.S. District Court for the District of Columbia over the agency's failure to respond to four petitions for small refinery waivers for its facilities.

The four petitions are among dozens that EPA has yet to act on. EPA in February missed a 90-day deadline to respond

to its petitions, the company says in its initial filing.

At a minimum, biofuels sources say EPA must provide the \$15 billion gallons "implied" by statute for conventional corn-based ethanol. Although there is no explicit corn ethanol mandate in the RFS, established under the Clean Air Act, the bulk of renewable and alternative fuel required under the program is still supplied by corn ethanol. While corn ethanol must achieve a 20 percent greenhouse gas reduction relative to unblended gasoline under the program, "advanced" biofuel and biodiesel must attain a 50 percent reduction, and cellulosic fuels a 60 percent reduction.

Reduced RFS blending volumes would further challenge a biofuels sector that has seen the Supreme Court reject its arguments against continued issuance of small refinery waivers, and also the D.C. Circuit strike down the Trump EPA's authorization of summer sales of 15 percent ethanol fuel (E15).

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EPA Seeks Remand Of Trump-Era RFS Waivers, Opening Door To New Policy

08/29/2021

InsideEPA/Climate

August 27, 2021 EPA is asking a federal appeals court to voluntarily remand Trump-era decisions that granted 31 small refinery waivers from renewable fuel standard (RFS) compliance and denied a smaller number of waiver requests, opening the door for the Biden administration to overhaul the agency's waiver policies in light of recent court rulings.

In an Aug. 25 motion filed in the consolidated suit *Sinclair Wyoming Refining, v. EPA*, the agency asks the U.S. Court of Appeals for the District of Columbia Circuit for remand without vacatur of an August 2019 agency memorandum that granted 31 waivers and denied five more for the 2018 RFS compliance year.

"Given that EPA wishes to reconsider its Decision, remanding to EPA without vacatur would serve important

jurisprudential interests by allowing EPA the first opportunity to address the varying arguments advanced by Petitioners and the appropriate administrative remedy," EPA says. Biofuels groups wish to overturn the 31 waiver approvals, while refiners fault EPA's waiver denials.

The agency says it needs to review the memo in the light of a January 2020 ruling by the 10th Circuit on small refinery waivers, and a June 25 decision by the Supreme Court reversing that decision in part. The 10th Circuit held in *Renewable Fuels Association (RFA) v. EPA* that small refineries that lacked exemptions in the past cannot claim them now, but the Supreme Court in *HollyFrontier Cheyenne Refining, LLC, et al. v. Renewable Fuels Association, et al* rejected this conclusion.

However, two key grounds the 10th Circuit cited to support scrapping three small refinery waivers did not feature in the high court ruling. The regional court found that waivers can only be justified by economic harm directly caused by the RFS, and that EPA in granting the three waivers failed to explain its apparent abandonment of an earlier position that refiners pass through the costs of RFS compliance to their customers, and so are not harmed.

The request comes as EPA is also faced with dozens of remaining undecided requests for small refiner waivers and as the agency is considering its overall policy on the economic hardship exemptions.

President Joe Biden criticized the Trump administration for granting the waivers in much greater numbers than the Obama administration did, and biofuels groups blame the waivers for "destroying demand" for their product.

EPA says, "voluntary remand without vacatur will allow EPA the opportunity to reconsider its action in light of these intervening decisions. In light of Petitioners' arguments in their merits briefs regarding the sufficiency of the administrative record for the Decision, EPA also seeks an opportunity to consider whether to provide a more robust explanation for any action that it takes on remand."

The agency adds, "EPA plans to consider what, if any, impact the remaining holdings in the Tenth Circuit's decision may have on EPA's implementation of the small refinery exemption provision generally, and what, if any, resulting impact that may have on the small refinery petitions adjudicated in the Decision and challenged here."

Biofuels groups oppose remand without vacatur, which would leave the 31 waivers in place.

But EPA defends its request, saying, "if the Court were to vacate the grants in the Decision as requested by the Biofuels Petitioners, thirty-one small refineries currently exempted from RFS compliance for 2018 would suddenly be non-compliant with their 2018 RFS obligations."

Further, remanding waiver denials without vacatur "would have no benefit for those refineries because they would still receive no immediate relief without further agency action. These small refineries have already complied with their 2018 RFS obligations," EPA says. -- Stuart Parker (sparker@iwpnews.com)

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EPA Seeks To Block Nationwide Review Of Offshore Air Permit Dispute

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InsideEPA/Climate

August 24, 2021 EPA is asking a federal appellate court to dismiss oil-giant Chevron's challenge to its recent decision rejecting Trump-era air permitting waivers for oil platform decommissioning off the California coast, a move that aims to avoid a national precedent on what it claims is a purely local issue even as a series of major East Coast projects await permitting.

In an Aug. 23 motion the agency asks the U.S. Court of Appeals for the District of Columbia Circuit to dismiss Chevron USA, Inc., v. EPA, arguing the case should be heard instead in the 9th Circuit, where the company has already filed suit as a "protective measure" in case the agency contested the venue in the D.C. Circuit as it is now doing.

Because "EPA's action is clearly locally or regionally applicable -- and not nationally applicable -- this Court is plainly an improper venue" under the Clean Air Act, EPA says.

The D.C. Circuit hears cases under the air law on EPA actions that are either "nationally applicable" or that EPA has declared to have "nationwide scope or effect."

Chevron's case challenges as a "nationally applicable" action an April letter from acting agency air chief Joe Goffman to the company, withdrawing the Trump administration's earlier January determination that the decommissioning process will not trigger Outer Continental Shelf (OCS) air permitting requirements.

Goffman said in the letter that the delegated air permitting authority -- here, the Ventura County Air Pollution Control District -- should re-examine whether activities associated with decommissioning the platforms, such as additional shipping, might trigger "major source" new source review (NSR) and possibly air emissions control requirements.

The air district should also consult EPA on its review of the permitting requirements, Goffman wrote.

Chevron asserts that the Trump EPA's January letter was "a nationwide non-applicability determination" and that its April letter "rescinded its earlier nonapplicability determination," EPA says.

"But neither letter purported to take 'nationwide' action. The April Letter, which contains neither the word 'national,' nor 'nationwide,' set forth 'EPA's view regarding the applicability of the [OCS] regulations and requirements' for the two California platforms only," EPA says.

"Rather than tether its venue argument to the legal effect of the April Letter on the two drilling platforms, Chevron argues that the April Letter 'set forth a new interpretation of section 328 of the Clean Air Act,'" EPA says.

But the agency claims this is not so, saying, "in the April Letter, EPA explicitly stated that it 'maintains' the interpretation of the [air law] permitting requirements for OCS sources that EPA communicated in earlier actions. . . . Moreover, even if one accepts Chevron's assertion that EPA changed its interpretation . . . in applying it to the Gail and Grace platforms, this still does not make the April Letter 'nationally applicable.'"

Hunter Policy

EPA relies for support on the court's June 2019 ruling in *Sierra Club v. EPA, et al.*, where the court dismissed a challenge to EPA's policy over petitions against Title V air operating permits. In that suit, environmentalists said that EPA in its rejection of their petition over a Utah power plant's air permit established a new, nationally applicable policy, which the agency has cited in several subsequent decisions.

Ultimately, environmentalists won a case against that policy in the 10th Circuit, which faulted the Trump EPA's reasons for declining to object to the Title V permit of PacifiCorps' Hunter coal-fired plant in Utah. But the ruling is limited in its application to the states of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming.

Environmentalists are now asking EPA to "disavow" the Hunter policy in challenges to air permits outside of the 10th Circuit states. The Trump-era policy holds that EPA should not "second guess" states' air permitting decisions when reviewing Title V permits, which are "umbrella" documents that must contain all applicable requirements, including underlying NSR permits.

In the Chevron OCS case, limiting the litigation to the 9th Circuit would avoid setting a binding national precedent that would also affect forthcoming decisions on the permitting of several planned wind farms off the East Coast, maintaining EPA's flexibility. EPA has already granted an air permit for the Vineyard Wind project off Massachusetts as a "major source," and several other large wind power projects are progressing in the area. Meanwhile, California offshore wind projects are also planned, within the 9th Circuit's jurisdiction.

OCS sources are subject to Clean Air Act permitting requirements including NSR which vary according to whether the corresponding onshore area is attaining or in nonattainment with national ambient air quality standards.

Areas in nonattainment are subject to tougher air pollution control requirements, such as the need for project developers to purchase emissions offsets to compensate for increases in emissions. EPA, when considering what constitutes an OCS "major" emissions source, takes into account not just the source itself once operating but also emissions associated with its construction, including some ship traffic.

Goffman in his April letter said, "The second sentence of [air law] section 328(a)(4)(C) states that OCS source activities 'include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation.' The dismantling of a platform or the demolition or 'deconstruction' of such a structure could be viewed to be similar to the other activities in this sentence. The list of activities covered by the statute is clearly not exclusive. In addition, a vessel may itself become an OCS source, if it meets the criteria in [air law] section 328(a)(4)(C) and EPA's implementing regulations."

For much of the coastline, except parts of the Gulf Coast and Alaska, EPA is the OCS permitting authority, although where sources are within 25 miles of the coast this may be delegated to a local authority such as Ventura County. In the Western Gulf of Mexico and parts of Alaska, the air law requirements are implemented by the Department of Interior, under its own regulations. -- Stuart Parker (sparker@iwpnews.com)

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EPA Signals Technology Enables Tougher Oil & Gas Methane Standards

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InsideEPA/Climate

August 24, 2021 A top EPA air official is signaling that the agency's forthcoming proposal to limit methane releases from new and existing oil and gas equipment will rely on improved technology to impose much more stringent limits than current, Obama-era rules limiting releases of the potent greenhouse gas at new facilities.

EPA officials have "been talking to a wide range of experts and stakeholders as we have been working to develop this proposal in order to get their input, and one of the things we have consistently heard is a request that we propose a rule that accommodates advancements in methane emissions detection and measurement technologies," said stationary source air chief Tomas Carbonell, during an Aug. 23 EPA workshop on methane detection technology.

He added: "That is something we have been keeping in mind as we put the proposal together."

Carbonell said the plan will be released "in the coming weeks," which would be in line with a Sept. 30 deadline President Joe Biden set in his Jan. 20 climate executive order that directed EPA to consider proposing standards for new and existing oil and gas activities, including exploration, production, transmission, processing and storage.

EPA signaled the timeline might slip to October when it released its latest unified agenda June 11, noting that both a first-time proposal for existing facilities as well as a separate rule to tighten methane and volatile organic compound limits for new facilities would be released that month.

Attendees discussed a wide range of technologies during the two-day workshop, including improvements in the ability to measure leaks through aerial and vehicle techniques, sensors and monitoring; leak detection and repair simulators; next-generation leak-detection solutions; and satellite instruments. Presentations were made by industry representatives, university researchers, state officials and environmentalists.

Carbonell said the technologies "have evolved tremendously, especially just in the last two years, thanks to investments from EPA's own Office of Research & Development as well as the Department of Energy, [non-governmental organizations], industry and universities."

He added that the technology "has moved far beyond sniffers and optical gas imaging. We have seen advancements in satellite detection. We have seen high-end instruments that are being applied to aerial and mobile measurements, as well as the use of lower-cost sensors to find methane at individual facilities and well sites."

Many of these technologies "are not currently approved for use in our regulations," Carbonell noted, adding that workshop attendees could learn how the new technologies have been applied -- hinting they could be included in the upcoming proposal.

An Aug. 23 Marketplace report on the workshop notes that EPA's longstanding method for calculating methane emissions from the oil and gas sector has been "widely criticized for underestimating emissions."

The agency currently relies on a "bottom-up" approach that multiplies the number of potential leak sites by an estimate of how much emissions each site leaks.

A "top-down" method allows technologies such as those discussed at the workshop to estimate emissions based on broader measurements. That method suggests the industry is emitting twice as much as EPA currently states, Jeff Rutherford of Stanford University told Marketplace.

Technology 'Gains'

EPA Administrator Michael Regan also addressed new methane leak detection technology in April Hill testimony, when he pledged to pursue strong oil and gas methane rules and embraced the Senate's vote to reinstate Obama-era rules.

He told Rep. Diana DeGette (D-CO) at an April 29 hearing before the House Energy & Commerce Committee's environment panel that technological improvements "will be part of the discussion that we have throughout our regulatory process. . . . The good news is many technologies and opportunities have evolved since the previous rule. So, we will be taking advantage of all the gains that have been made over the past few years."

DeGette had asked if it is possible to establish continuous emissions monitoring of methane releases, noting that leaks can be "happening for months, without detection."

EPA's rules are not being developed in isolation, as at least two other federal agencies -- the Department of the Interior's Bureau of Land Management (BLM) and the Department of Transportation's Pipeline & Hazardous Materials Safety Administration (PHMSA) -- are also pursuing methane limits from oil and gas operations.

As part of the PHMSA rulemaking, slated to be completed in December under the PIPES Act, environmentalists are urging inclusion of advanced leak detection methods, an approach industry officials cautiously support even while raising cost concerns. Environmental Defense Fund urged such technology be the basis for the rule at a May meeting, where a PHMSA official called the upcoming rule "an overall methane reduction strategy."

Meanwhile, BLM is working on a new rule to limit methane releases from oil and gas development on federal lands, after a series of court rulings vacated a Trump-era rule that largely scrapped Obama-era standards, though a different court halted implementation of much of the Obama rule.

In *California Air Resources Board, et al. v. David Bernhardt, et al.*, in the U.S. Court of Appeals for the 9th Circuit, where the Trump administration and industry allies challenged the vacatur of the weakened BLM requirements, the court in an Aug. 23 order directed the clerk to temporarily close the case until Dec. 31 to allow mediation talks to proceed. The talks began in December 2020. The court also slated a telephone status conference Sept. 29 and suspended the briefing schedule the same day opening briefs were due.

Sources familiar with the case say all parties agreed to put the case on hold to continue mediation and discuss a potential settlement while also allowing BLM to work on a new rule.

One source says BLM is unlikely to issue anything until after EPA completes its proposals, though that agency's unified agenda said its plan could also be issued in October. -- Dawn Reeves (dreeves@iwpnews.com) & Doug Obey (dobey@iwpnews.com)

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EPA submits draft ELG plan for OMB review

08/29/2021

InsideEPA/Climate

August 25, 2021 EPA has submitted for pre-publication White House review a draft of the next version of its periodic Clean Water Act plan for developing new and revised technology-based effluent limitations guidelines (ELGs) for a range of industry sectors, the first such plan under the Biden administration.

"EPA is committed to biennially updating its ELG Program Plan--accounting for the latest technology data to better protect public health and the environment," an agency spokesperson tells Inside EPA. "EPA submitted a draft of Preliminary ELG Program Plan 15" to the White House Office of Management and Budget (OMB) "for interagency review on August 20, 2021," the spokesperson says.

OMB review generally takes 90 days but can take more or less time depending on the complexity of the policy under review.

The agency finalized its current ELG plan, known as ELG Plan 14, in the final days of the Trump administration.

The current plan added the metal finishing sector to an ongoing study of per- and polyfluoroalkyl substances (PFAS) discharges that already included organic chemicals, plastics and synthetic fibers (OCPSF) manufacturers and formulators, airports, rug and textile manufacturers, and pulp and paper manufacturers.

But drinking water utilities and environmentalists have urged the agency to expand its plans to develop PFAS ELGs for OCPSF manufacturers, noting several other industrial sectors use large amounts of PFAS.

The agency is also currently studying whether to update ELGs for the electrical and electric component category and plans to revise ELGs for the centralized waste treatment category.

The Biden administration has already announced plans to revise Trump-era ELGs for coal-fired power plants, although the agency has yet to detail a timeline for revising provisions in the Obama-era power plant ELG rule for leachate and legacy waste streams that a federal appeals court in 2019 determined were too lenient.

Former Trump EPA officials have questioned the Biden administration's plan to revise the Trump-era power plant ELGs, saying the Biden EPA's emphasis on membrane technology could violate statutory data and procedural requirements.

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EPA Vehicle GHG Hearings Showcase Industry Splits On EV Credits

08/29/2021

InsideEPA/Climate

August 26, 2021 Public testimony on EPA's near-term vehicle greenhouse gas plan is showcasing splits between traditional automakers who broadly embrace its flexibilities -- including credit "multipliers" for electric vehicle (EV) and other advanced powertrains -- and EV makers arguing they could undercut the EV markets.

The remarks at EPA's August 25-26 hearing on proposed vehicle GHG standards for model years 2023- 2026 showcase how the plan's effects depend on both its top-line stringency and detailed compliance provisions, including controversy about whether various technology incentives spur, or instead delay, GHG cuts by undercutting the rule's overall stringency.

"We support EPA's inclusion of provisions that incentivize and encourage [electrification], including electric vehicle production multipliers and recognition that electric vehicles have zero tailpipe emissions," said the Alliance for

Automotive Innovation, the main automaker trade group, in Aug. 26 testimony. "These tools are necessary and important to a robust and well-balanced program."

The alliance's comments appear consistent with Aug. 26 testimony from Ford Motor Co. sustainability director Cynthia Williams, who praised the goals of the proposal but also more specifically its inclusion of "a range of compliance mechanisms," including recognition of "advanced technologies like electric vehicles."

While Williams' remarks did not go into more detail, they appeared to nod favorably to the multiplier credits that treat EVs as more than one vehicle under the regulations.

Such multipliers were included in Obama-era standards that stretched from MY17-25, though EPA in that rule phased them out in the latter years of the program. The new EPA proposal, however, essentially restores and extends them for MY22-25, in combination with a cap on cumulative credits, with agency officials claiming they will encourage a transition to zero emission vehicles.

Traditional automakers' embrace of such flexibilities contrasts markedly with input from other business groups focused on the EV sector, with Zero Emissions Transportation Association (ZETA) Policy Director Kelly Fleming raising concerns about "potential loopholes" that could lead to "overly generous crediting" of technologies.

Among the concerns from ZETA -- whose members includes EV makers like Tesla and Rivian, as well as utilities and EV charging companies -- are that multiplier provisions "double the credits earned for every EV sold." That "weakens the standards and indirectly incentivizes traditional automakers to continue manufacturing their least efficient vehicles, especially as EVs reach price parity."

ZETA also attacks as "outdated" the EPA proposal's embrace of a technology incentive for strong hybrid trucks. "While it made sense to provide these incentives when electric drivetrains were still being innovated, we currently have fully electric pickup trucks slated to be on the road by 2023, including from Rivian, Tesla, and Ford."

A footnote in ZETA's testimony with respect to EV incentives links to a working paper by Yale University economist Kevin Gillingham, which environmental groups are also citing, asserting that such multipliers could actually reduce EV market share by undercutting the top-line stringency of auto GHG standards. ZETA's comments also track with similar testimony from Rivian that the multipliers are "no longer needed" and could now undercut rather than boost EV deployment.

Off-Cycle Credits

The discussion of such advanced technology multipliers -- whether for fully or partially electrified vehicles -- is just one of the compliance flexibilities at play in EPA's proposal, with environmentalists and other critics of such flexibilities arguing they undermine the stringency of EPA's plan even as they garner significant support from many in industry.

Another such issue is the topic of "off-cycle" emission credits that recognize for compliance purposes certain technologies not necessarily captured by traditional test cycles. Some examples include solar panels that help take the load off an alternator in gasoline vehicles; stop-start technology; passive cabin ventilation; and heating of powertrains to boost their efficiency.

The Motor and Equipment Manufacturers Association (MEMA), representing more than 1,000 auto supplier members, praises such off-cycle credits in Aug. 26 remarks that more broadly support a "stringent but realistic" MY23-26 rule. The group also touts its members' role in both traditional and advanced vehicles, including through manufacture of electrified power trains.

"MEMA supports expanding the off-cycle technology credit program and increasing the credit cap on the credits received through the off-cycle menu," the group says, nodding toward language in EPA's proposal that would increase a cap on such credits for a menu of specific technologies from 10 to 15 grams per mile.

Such credits, along with a separate program for efficient air conditioning systems, "are important as they recognize technologies that achieve real-world GHG emissions reductions," according to MEMA.

The group adds: "An expansion of the off-cycle credit program is critical in encouraging innovative technologies that allow a broader, more creative, and cost-efficient range of technology options for meeting the standards."

MEMA's testimony is silent on the issue of EV multipliers, but its off-cycle credit support is in line with auto companies' longstanding backing of that idea.

However, the suppliers' embrace of off-cycle credits also appears at odds with ZETA, which takes a swipe at credits for one such technology -- stop-start technology -- by noting it is now widely available.

Environmental groups are also increasingly critical of the off-cycle credits in EPA's rules.

"The off-cycle credit program is broken, as indicated by EPA's acknowledgment in the proposal that manufacturers have been receiving undue credits for a number of technologies," Union of Concerned Scientists vehicle expert David Cooke said in Aug. 26 testimony. "Now is the time to rein in this program, not expand it."

Consumer Reports Sustainability Policy Director Quinta Warren in Aug. 26 hearing remarks also cited such off-cycle credits as one of several factors behind an estimate some environmentalists are citing that EPA's proposal recovers only 75 percent of the "lost benefits" of the Obama standards.

'Checkpoints'

A common thread running through industry remarks at the hearing is that EPA's broad plans to move toward electrification -- both incrementally in the MY23-26 rule and in its subsequent, more stringent rulemaking extending at least out to MY30 -- depends on broader efforts by federal, state and local officials as well as numerous stakeholders.

But testimony from Hyundai may have been the most explicit at the hearing in floating the concept of periodic assessments to determine if such efforts are adequate. The company floated the notion of "checkpoints" on progress over time, a concept that could be interpreted as akin to the "mid-term review" in the Obama rules.

"We recommend metric-based checkpoints that ensure that all required components for success, such as consumer acceptance, infrastructure, battery supply, grid resiliency, and more, are in place as the aggressive electrification path moves forward. Continuing review is appropriate to ensure complimentary actions are well-balanced. Checkpoints provide an opportunity to address any issues before they have negative impacts on the program."

Meanwhile, the hearing also may have provided an early read of potential legal strategies by groups outside the auto sector fighting stronger vehicle standards, with several members of the free-market Competitive Enterprise Institute (CEI) -- which challenged the Trump administration's rollback of vehicle GHG standards as too stringent -- also testifying.

CEI General Counsel Sam Kazman, for example, argued in Aug. 25 testimony that EPA's proposal "arbitrarily restricted the range of alternatives that it is considering" by failing to weigh the option of rules less stringent than agreements California negotiated with five automakers during the Trump administration.

Kazman also argued the proposal understates the safety risk of tighter standards.

Safety concerns were a key public argument the Trump administration used to defend its rollback plan. But the claims also sparked a barrage of expert criticism by outside analysts who noted that the claimed safety benefits of the plan mostly or completely disappeared when modeling errors, including flawed projections of miles driven by the public, were taken into account. -- Doug Obey (dobey@iwpnews.com)

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EPA's Methane Rules May Hinge On Hill Panel's Bid To Boost Legal Basis

08/29/2021

InsideEPA/Climate

August 23, 2021 As EPA writes new climate rules for the oil and gas sector, the regulation's fate may hinge in part on House Democrats' report that sought to bolster an important legal argument supporting the agency's rules for the sector and potentially others whose emissions may be subject to regulation in the future.

At issue is the ease with which EPA can begin regulating climate-warming pollution from industries it already regulates under section 111 of the air law for their conventional air pollutants.

The agency's methane standards for the oil and gas sector have emerged as an important test case for this legal debate, with the Trump administration previously concluding that officials first had to issue a detailed finding that a sector's emissions of the pollutant in question were "significant" enough to merit regulation.

Trump officials in September 2020 rescinded Obama-era methane rules after concluding the agency improperly skipped the significance finding -- though Hill lawmakers and President Joe Biden revoked the Trump policy earlier this summer using the Congressional Review Act (CRA), immediately reinstating the Obama standards for new sources.

The CRA resolution is helping to pave the way for the Biden EPA to develop tougher methane rules for oil and gas equipment, with officials planning to issue proposed standards for both new and existing sources in October.

While the act of reinstating the Obama rules garnered widespread attention, House Democrats also formally outlined the legal basis for the CRA resolution, a document that has received relatively less scrutiny.

That June 17 report, submitted by House Energy & Commerce Committee Chairman Frank Pallone (D-NJ), seeks to detail the congressional intent behind the CRA measure, an issue that could play a factor in future litigation concerning the Biden EPA's planned oil and gas methane rules.

"Passage of the resolution of disapproval indicates Congress's intent to make clear that the 2020 Rescission Rule erred in contending that section 111 'requires, or at least authorizes [EPA] to require,' a pollutant-specific [significant contribution finding (SCF)] as a predicate for promulgating a standard of performance for that pollutant. The plain language of section 111 does not support this interpretation," the House report says.

The report embraces the Obama administration's interpretation of the issue, which is that EPA must complete an SCF to list an industry for regulation under 111, though it only needs to state a "rational basis" to extend regulation to an additional pollutant. The oil and gas sector has been regulated under this section of the air law since the 1970s.

"Contrary to the 2020 Rescission Rule, section 111 cannot be interpreted, given the plain language of the statute . . . to require that the EPA make a SCF for each pollutant as a predicate to promulgating a standard of performance for that pollutant," the Energy & Commerce report adds.

Source Categories

Further, the committee report says that requiring a pollutant-specific finding is inconsistent with the air law's mandate for a source-category SCF, rendering the latter a "nullity."

"Congress did not intend to require the EPA to go through the exercise of determining that a source category contributes significantly to dangerous air pollution on account of its pollutant emissions considered together, and then also require the EPA to make the same determination for each pollutant individually that the EPA sought to regulate. That makes no sense," the report says.

The lawmakers add that EPA is free to conduct a pollutant-specific SCF to bolster its analysis, though it cannot require such a finding before issuing rules.

The successful use of the CRA is a relatively rare occurrence given that it requires the president to sign a congressionally approved resolution for it to take effect and rescind a regulation. That typically means the statute is employed after a change in administration in which the White House works with a friendly Congress.

As lawyers at the Troutman Pepper law firm noted in a recent blog post, legislative history regarding CRA resolutions is rarer still, with lawmakers typically taking quick action to pass a short resolution simply stating that a given rule is scrapped and should be treated as having "never taken effect."

"The House report claims that Congress' intent in the Clean Air Act is clear: Once an industry is found to contribute to one air pollution problem, EPA can regulate it for any air pollution problem," the blog post says.

It adds: "In essence, the report reflects what the current Congress thinks a prior Congress intended when adopting the Clean Air Act, making it an unusual sort of retroactive legislative history. The effect of this statement remains to be seen."

'Dissenting Views'

While Democrats made their case for the stance, committee Republicans, led by Reps. Cathy McMorris Rodgers (R-WA), the panel's ranking minority member, and David McKinley (R-WV), the ranking Republican on the environment subcommittee, offered "dissenting views."

The air law "requires EPA to formally establish that a pollutant significantly contributes to air pollution that endangers public health as a predicate to regulating that pollutant," Rodgers and McKinley argue.

They then add that the CRA resolution "will eliminate this important requirement. . . . In effect, [the resolution] would accelerate the direct regulation of methane across all listed source categories, and new categories, regardless of their overall contribution to air pollution, for both new and existing sources spanning the entire range of industrial sources, including manufacturing, chemicals, paper, metals, and many others."

And while the GOP leaders on the committee charge that the CRA measure continued a series of "partisan attacks" on the energy sector, the resolution attracted bipartisan support in both the House and Senate, including energy subcommittee ranking member Fred Upton (R-MI) along with 11 other House Republicans. -- Lee Logan (llogan@iwpnews.com)

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Fearing GHG Delays, States Renew Press On EPA To Speed Truck NOx Rule

08/29/2021

InsideEPA/Climate

August 27, 2021 State air regulators are stepping up their push for EPA to accelerate the timeline for adopting rules to slash nitrogen oxide (NOx) emissions from heavy-duty (HD) trucks, raising new fears that the agency's plan to combine that measure with tighter greenhouse gas limits could delay the NOx standards and undercut states' air quality goals.

"EPA must take immediate action to issue a proposed rule, not only because revised HD NOx standards are long overdue, but also because truck emissions contribute substantially to ozone and fine particulate levels, and if left unaddressed will prevent many areas from attaining or maintaining" EPA's national ambient air quality standards (NAAQS) "or meeting other clean air and public health goals," the National Association of Clean Air Agencies (NACAA), which represents most state air agencies, said in an Aug. 26 letter to EPA Administrator Michael Regan from.

An EPA spokesperson did not immediately respond to a request for comment.

NACAA's letter responds to EPA's Aug. 5 announcement, based on President Joe Biden's executive order on vehicle emissions, that it is launching a "targeted" two-step process to cut emissions from heavy-duty trucks, with a first phase that will impose tougher NOx limits for all trucks and stronger GHG standards for select segments, to be followed by more "robust" GHG reductions later for all trucks.

The first rulemaking, to be finalized by the end of 2022, will apply to heavy-duty vehicles starting in model year 2027. That action will set new standards for NOx for the entire sector as well as "targeted upgrades" to the current, Obama-era GHG standards starting in that model year. A second rule "would set more robust GHG emission standards for new heavy-duty vehicles sold as soon as MY 2030 and beyond," according to EPA.

But NACAA, which represents 115 local air agencies in 41 states, remains "dissatisfied with the slow pace of this initiative -- both for the proposed and final rules -- and are concerned that if the 'final-hour' December 2022 date is missed the 2027 MY will be lost," the letter says.

Lead time requirements in the Clean Air Act for heavy vehicle standards require EPA to issue a final rule by the end of 2022 if it is to implement tougher NOx requirements in MY27, one industry source has explained.

"Because mobile source emission standards take years to phase in, action on the proposed HD NOx standards must occur immediately and the final rule must follow as expeditiously as practicable," the NACAA letter says.

To facilitate completing a final NOx rule well ahead of the December 2022 deadline, the state officials suggest EPA should separate the GHG portions of its planned rulemaking from the NOx portion. "[W]e recommend that such [GHG] provisions be pursued in a parallel rulemaking, not in this one," the letter says.

"While we recognize the critical need for GHG reductions, especially in light of the August 9, 2021, report from the Intergovernmental Panel on Climate Change, we must still urge that you release a strong NOx proposal and set in motion a speedy process to a final rule without any further delay."

EPA announced its plan to combine the NOx rule with "targeted" GHG updates despite prior concerns from industry

groups and some state officials that such a strategy threatens to delay the NOx rule update. Environmental groups, however, have been pressing the agency to issue multipollutant rules that impose tough NOx limits and strengthen GHG requirements.

'50-State Standard'

NACAA notes that the California Air Resources Board (CARB) last year adopted its own new low-NOx standards for heavy trucks, suggesting EPA should quickly follow with equivalent federal rules to establish a "strong, 50-state standard" beginning with MY27.

NACAA has maintained that "strong, equivalent federal standards are critically important to address the significant need for NOx reductions from highway HD trucks in areas all across the country," the letter notes.

If EPA does not "require sufficient NOx reductions from HD trucks, or does not take such action immediately, many areas will be forced to adopt severe limits on local businesses," NACAA further argues. "Because the CAA largely preempts state and local regulation of mobile sources, states and local authorities facing ozone nonattainment may be forced to impose extremely stringent limits on stationary sources -- for which they have authority to control -- at ever-increasing costs, if reductions from such sources are even available. However, such limits will likely not be sufficient to attain the NAAQS in some areas."

The state officials are requesting a meeting with Regan, or political leadership in EPA's air office and senior career staff, the letter adds. -- Curt Barry (cbarry@iwpnews.com)

Editor's Note: After this story was published, a spokesman said the agency was proceeding with its plan. "The agency is moving forward expeditiously on NOx and targeted updates to existing greenhouse gas standards for heavy-duty highway vehicles, while also planning longer term standards to keep pace with advancing technology in this sector," the spokesman said.

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Oil-state Republicans urge EPA to waive 2020 RFS

08/29/2021

InsideEPA/Climate

August 24, 2021 A group of 17 Republican senators from oil-producing and refining states is pressing EPA to waive its renewable fuel standard (RFS) for 2020, and to reduce biofuel blending obligations for refineries in its forthcoming proposed volumes rules for 2021 and 2022, as the agency nears proposal of those rules.

In their Aug. 23 letter to EPA Administrator Michael Regan, the group led by Sens. Pat Toomey (R-PA) and Shelley Moore Capito (R-WV) say, "In light of COVID-19's impact on the demand for refined product and the burden of RFS compliance, we urge you to waive or significantly reduce the renewable volume obligation (RVO) for compliance year 2020, and set the 2021 and 2022 RVOs at levels that comport with reality."

The senators ask that the 2021 and 2022 blend levels be set below the "blend wall," or the point at which oil sector groups say no more biofuel can be blended into the fuel supply because of vehicle and infrastructure constraints.

They further say that the price of RFS compliance credits, or renewable identification numbers (RINs), has "soared" to over \$2 "for the first time since the enactment of the RFS," which was established in its current form in 2007.

Insufficient "carryover RINs" are available in the RIN "bank" to satisfy demand, "leaving U.S. refiners little choice but to cut fuel production, increase fuel exports, or face non-compliance with the RFS. All of these outcomes would harm U.S. consumers, threaten union jobs, and curtail the ongoing economic expansion," the senators write.

The intervention comes as EPA is preparing to send its overdue proposed 2021 RVO to the White House Office of Management and Budget (OMB) for pre-publication review, a rule that is expected to reduce the RFS biofuel blending requirement, according to news reports.

The reports suggest EPA may reduce the biofuel blending volumes for 2021 relative to those for 2020 to reflect reduced overall fuel use during the pandemic.

But EPA is also expected to issue an RVO for 2022 that may be higher than the 2021 volume.

EPA by law should have finalized the rule for 2021 by Nov. 30, 2020, but given the lack of even a proposal to date, the agency will be hard-pressed to issue the final regulation even a year late.

Biofuels groups were swift to condemn the GOP senators' letter. Renewable Fuels Association President and CEO Geoff Cooper said it "should come as no surprise to anyone that Senators Cruz, Cornyn, Inhofe, Barrasso and their Republican anti-ethanol colleagues are circling the wagons to protect the status quo for Big Oil and continuing their efforts to undermine cleaner, greener renewable fuels."

Cooper added, "Asking EPA to waive the 2020 RFS standards -- which were finalized by the previous administration in 2019 -- is a fool's errand; EPA has repeatedly stated that it does not have the authority to go back in time and change RFS volumes that have already been finalized. And the Biden administration knows that reducing the 2021 and 2022 RFS volumes would derail the President's agenda related to clean energy, climate, and domestic manufacturing jobs. It would also mark a big step backward on the path to net zero GHG emissions by 2050."

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Schumer Says Most Of Biden's GHG Pledge To Come From Reconciliation

08/29/2021

InsideEPA/Climate

August 25, 2021 Senate Majority Leader Chuck Schumer (D-NY) is circulating an analysis that shows nearly two-thirds of greenhouse gas reductions needed to achieve the Biden administration's pledge under the Paris climate agreement will come from reconciliation legislation being developed by Democrats over the next few weeks.

The findings signal that EPA, other federal agencies, and states would face less of a burden in contributing toward the administration's climate targets via regulation and other policies than if the pending bill were to fail, a point some White House officials have previously emphasized.

In an Aug. 25 "dear colleague" letter, Schumer touted a range of climate measures Democrats plan to include in the reconciliation legislation, but especially measures aimed at creating a Clean Electricity Payment Program and a range of clean energy and clean vehicle tax incentives.

"There are many important policies in the budget that will help us achieve our goals, but there are two in particular that will work together to get us there: the Clean Electricity Payment Program in combination with the Senate Finance Committee's clean energy and vehicle tax package," says Schumer's letter, which was first reported by Axios.

Schumer's analysis is not surprising since Democrats have been saying for months the bulk of President Joe Biden's climate and economic agenda will be implemented through reconciliation procedures allowing Democrats to circumvent a GOP Senate filibuster.

But the analysis offers new details on how the Biden administration plans to achieve its Paris accord pledge of halving GHG emissions based on 2005 levels by 2030, data key Senate Republicans have long sought but which officials have so far declined to provide.

It also details the stakes for Democrats should they fail to enact the massive legislation in advance of a next round of international climate talks in Glasgow, Scotland, in November.

"When you add Administrative actions being planned by the Biden Administration and many states -- like New York, California, and Hawaii -- we will hit our 50 percent target by 2030," says the Schumer letter.

Such findings underscore statements from domestic climate chief Gina McCarthy, who earlier this year detailed multiple ways the Biden administration plans to help the private sector advance low-carbon energy, arguing such federal investment can help end a sole "reliance on regulation" to reduce GHGs.

"We're not just talking about strategies to regulate," McCarthy said March 4 at the CERAWeek virtual energy conference. "If we're asking you to achieve certain levels [of GHG cuts], what are we going to put on the table like we're supposed to do as grown-ups? To say the federal government will be there to support you."

Schumer's analysis also underscores the political argument top Democrats have been making as they urged recalcitrant House Democrats to support the budget resolution that unlocks the streamlined reconciliation process.

For example, John Podesta, who served as White House chief of staff in the Clinton administration and a climate advisor to President Barack Obama, argued earlier this week that "the cost of inaction is greater than the cost of action" when it comes to climate change, adding "if reconciliation stalls," the "climate catastrophe" will be "imminent."

Infrastructure Measures

Schumer's office analyzed the GHG reductions of both the \$1 trillion bipartisan infrastructure package the Senate approved earlier this month as well as the budget resolution directing the drafting of a \$3.5 trillion reconciliation legislative package.

While the bipartisan bill includes some climate elements, the resolution outlines more significant provisions, including the clean power incentives, fees on methane and carbon-intensive imports, and clean energy tax breaks.

As such, Schumer's analysis finds most of the emission cuts will come from the Democrats-only reconciliation plan.

"My team aggregated the best available data from a wide range of organizations that specialize in policy analysis for each emissions reducing policy in the Infrastructure Investment and Jobs Act, and each proposed policy for the budget resolution," the letter says.

Specifically, the analysis found proposals for the clean electricity program and the tax incentives would achieve 41.9 percent of the emission reductions needed to cut GHGs by 45 percent by 2030, according to a chart accompanying the letter.

Provisions for clean vehicle incentives would result in 15.7 percent of both bills' GHG cuts, and planned methane fees would contribute 9.1 percent. All of those policies are contained in the budget resolution plan.

Clean energy provisions in the bipartisan infrastructure deal such as cleaning up abandoned mines and demonstration projects for decarbonizing industrial facilities would contribute 0.5 percent and 1.2 percent, respectively, according to the chart.

The House approved its version of the budget resolution on Aug. 24, after the Senate moved its version on Aug. 11, clearing the way for authorizing committees to begin drafting reconciliation legislation over the next few weeks.

The House is slated to vote on the bipartisan infrastructure deal by Sept. 27, while the Senate cleared its version of the \$1 trillion deal on Aug. 10. -- Rick Weber (rweber@iwpnews.com)

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08/29/2021

Inside Washington Publishers

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But the analysis offers new details on how the Biden administration plans to achieve its Paris accord pledge of halving GHG emissions based on 2005 levels by 2030, data key Senate Republicans have long sought but which officials have so far declined to provide.

It also details the stakes for Democrats should they fail to enact the massive legislation in advance of a next round of international climate talks in Glasgow, Scotland, in November.

"When you add Administrative actions being planned by the Biden Administration and many states -- like New York, California, and Hawaii -- we will hit our 50 percent target by 2030," says the Schumer letter.

Such findings underscore statements from domestic climate chief Gina McCarthy, who earlier this year detailed multiple ways the Biden administration plans to help the private sector advance low-carbon energy, arguing such federal investment can help end a sole "reliance on regulation" to reduce GHGs.

"We're not just talking about strategies to regulate," McCarthy said March 4 at the CERAWEEK virtual energy conference. "If we're asking you to achieve certain levels [of GHG cuts], what are we going to put on the table like we're supposed to do as grown-ups? To say the federal government will be there to support you."

Schumer's analysis also underscores the political argument top Democrats have been making as they urged recalcitrant House Democrats to support the budget resolution that unlocks the streamlined reconciliation process.

For example, John Podesta, who served as White House chief of staff in the Clinton administration and a climate advisor to President Barack Obama, argued earlier this week that "the cost of inaction is greater than the cost of action" when it comes to climate change, adding "if reconciliation stalls," the "climate catastrophe" will be "imminent."

Infrastructure Measures

Schumer's office analyzed the GHG reductions of both the \$1 trillion bipartisan infrastructure package the Senate approved earlier this month as well as the budget resolution directing the drafting of a \$3.5 trillion reconciliation legislative package.

While the bipartisan bill includes some climate elements, the resolution outlines more significant provisions, including the clean power incentives, fees on methane and carbon-intensive imports, and clean energy tax breaks.

As such, Schumer's analysis finds most of the emission cuts will come from the Democrats-only reconciliation plan.

"My team aggregated the best available data from a wide range of organizations that specialize in policy analysis for each emissions reducing policy in the Infrastructure Investment and Jobs Act, and each proposed policy for the budget resolution," the letter says.

Specifically, the analysis found proposals for the clean electricity program and the tax incentives would achieve 41.9 percent of the emission reductions needed to cut GHGs by 45 percent by 2030, according to a chart accompanying the letter.

Provisions for clean vehicle incentives would result in 15.7 percent of both bills' GHG cuts, and planned methane fees would contribute 9.1 percent. All of those policies are contained in the budget resolution plan.

Clean energy provisions in the bipartisan infrastructure deal such as cleaning up abandoned mines and demonstration projects for decarbonizing industrial facilities would contribute 0.5 percent and 1.2 percent, respectively, according to the chart.

The House approved its version of the budget resolution on Aug. 24, after the Senate moved its version on Aug. 11, clearing the way for authorizing committees to begin drafting reconciliation legislation over the next few weeks.

The House is slated to vote on the bipartisan infrastructure deal by Sept. 27, while the Senate cleared its version of the \$1 trillion deal on Aug. 10. -- Rick Weber

Separate EPA, NHTSA Auto Plans Reflect Looser Tie Between Agencies

08/29/2021

Inside Washington Publishers

The Biden administration's separate proposals governing vehicle greenhouse gases and fuel economy from EPA and the National Highway Traffic Safety Administration (NHTSA) reflect a wider separation between the two agencies than previous rules, even if it is not a full "decoupling" as some environmentalists have advocated.

During the Obama administration, officials "harmonized" EPA and NHTSA fuel economy standards, which California officials also largely adopted. The Trump administration's rollback of vehicle standards was also jointly issued by the two agencies.

But Biden officials say the two proposed rules, issued early this month, were "coordinated," though they have differing start dates and trajectories for how quickly standards are strengthened.

That comes on top of various differences in the agencies' programs that have long existed due to their separate legal authorities, including compliance mechanisms in the EPA rules for GHG cuts not directly tied to fuel economy improvements.

While the separate rules might spark heartburn among automakers that have long pushed for "One National Program," federal officials are seeking to assuage any such concerns.

NHTSA "is confident that industry would still be able to build a single fleet of vehicles to meet both the NHTSA and EPA standards. Auto manufacturers are extremely sophisticated companies, well-able to manage complex compliance strategies that account for multiple regulatory programs concurrently," the agency says in its proposed update to fuel economy rules for model years 2024-2026.

Even the procedural rollout of the rules underscores the wider gap between the two agencies. EPA's proposed rule was released Aug. 5, the same day as a White House event at which President Joe Biden signed a new executive order (EO) with a 2030 electric vehicle (EV) sales goal.

By contrast, NHTSA Aug. 5 issued a press release that promised its proposed rule was "forthcoming" and described the high points, though it did not release the regulatory text until Aug. 10.

The two rules also vary on key substantive issues. EPA's plan begins a year earlier, in MY23, because it faces less-stringent manufacturing lead-time requirements than NHTSA does under its Energy Policy & Conservation Act (EPCA) authority.

Under EPA's rule, automakers face a significant, 9.8 percent top-line boost in stringency in MY23 compared with current, Trump-era requirements. The plan then imposes standards that increase by roughly 5 percent annually through MY26.

As NHTSA explains in its proposal, however, its fuel economy requirements would increase by 8 percent each year. "An important consequence of [the two plans' differing start dates] is that EPA's proposed rate of stringency increase, after taking a big leap in MY 2023, looks slower than NHTSA's over the same time period," the NHTSA plan states.

But the agency argues its analysis addresses "the core question of whether compliance with both standards should be achievable with the same vehicle fleet, after manufacturers fully understand the requirements from both proposals. The differences in what the two agencies' standards require become smaller each year, until alignment is achieved."

Even though EPA and NHTSA are taking a "change in approach" since the early part of the Obama administration, when they issued joint GHG and fuel economy rules, "the agencies worked together to avoid inconsistencies and to create proposals that would continue to allow manufacturers to build a single fleet of vehicles to meet both agencies' proposed standards."

California Rules

NHTSA's discussion of coordination with EPA is relevant to EPCA's mandate that it consider "the effect of other motor vehicle standards of the Government on fuel economy," when issuing efficiency requirements.

On this issue, the agency says its proposal "accounted for" California and other states' zero-emission vehicle (ZEV) sales mandates, even though the states currently cannot enforce those rules due to a Trump-era preemption policy that Biden officials are reconsidering.

"NHTSA believes that it is reasonable to include ZEV in the baseline for this proposal regardless of whether California receives a waiver of preemption under the [Clean Air Act] because, according to California, industry overcompliance with the ZEV mandate has been extensive, which indicates that whether or not a waiver exists, many companies intend to produce ZEVs in volumes comparable to what a ZEV mandate would require."

The agency also notes that it accounted for voluntary, Trump-era agreements on GHGs between five automakers and the Golden State because the agreements are "contractually binding" on the companies.

However, NHTSA's plan does not expressly account for California's vehicle GHG requirements -- which largely align with Obama-era standards but are also currently blocked by the Trump preemption rule -- because EPA has not yet made a final decision on the state's air act waiver, and because "modeling a sub-national fleet is not currently an analytical option for NHTSA."

'Bolder Approach'

Despite the increased separation between the EPA and NHTSA rules, the dynamic appears far short of a full "decoupling" that some advocates of strict auto standards pushed for during the transition and early weeks of the Biden administration.

Under some versions of that scenario, EPA would write aggressive GHG standards that increasingly required large volumes of EVs due to the belief that its Clean Air Act authority is more unfettered.

EPA has "the clearest regulatory authority" for vehicle GHG rules and can encourage a "bolder approach," especially for light-duty EVs, argued a November 2020 paper from the Climate 21 Project, a group that consisted of several Obama administration veterans, several of whom subsequently accepted top jobs at the Biden EPA and elsewhere in the administration.

Some had even floated the possibility that NHTSA would cease writing fuel economy standards after MY30, the last year it is currently required to do so under EPCA.

Biden's EO is technically silent on this point, directing both EPA and NHTSA to write follow-up GHG and fuel economy rules that take effect in MY27 and extend "at least" through MY30.

The president directed the two agencies to complete those rules by July 2024, which would be six months before the conclusion of his current four-year term in office.

The EO says the two agencies "shall coordinate, as appropriate and consistent with applicable law, during the consideration of any rulemakings pursuant to this order." -- Lee Logan

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West Virginia coal plant ELG costs may force closures

08/29/2021

InsideEPA/Climate

August 25, 2021 Differing opinions from state utility regulators in Virginia, Kentucky and West Virginia about the necessity to pass on to consumers the costs of complying with EPA effluent limits at three coal-fired power plants in West Virginia are increasing the likelihood the power plants may be forced to close by 2028.

The Virginia Corporation Commission became the latest utility commission to weigh in on the issue, deciding Aug. 23 to deny Appalachian Power's request to increase electric rates to pay for upgrades at the John Amos and Mountaineer plants in West Virginia necessary to comply with EPA's power plant effluent limitations guidelines (ELGs).

The Virginia commission denied approximately \$4.2 million of expenses associated with Appalachian Power's proposed investment in the plants, finding the company did not meet its burden of proving the reasonableness and prudence of

these costs at this time.

Virginia's decision on the Amos and Mountaineer plants follows a July 16 decision by the Kentucky Public Service Commission denying Kentucky Power's request to construct projects related to ELGs at the Mitchell plant in West Virginia, with Kentucky saying the company failed to provide evidence the projects are needed or are a reasonable, cost-effective alternative. The Mitchell plant is operated jointly by Kentucky Power and Wheeling Power.

"Based on the evidence provided in the case, the [Kentucky] Commission found the company over-stated the costs of replacement energy and capacity," the commission said in a July 16 press release. "Additionally, Kentucky Power did not account for potential future environmental compliance costs that could add to costs to keep Mitchell in operation beyond 2028."

Both Virginia and Kentucky, however, approved the power companies' requests to raise rates to comply with EPA's coal ash waste rules.

Meanwhile, the Public Service Commission of West Virginia (PSC) Aug. 4 approved requests from Appalachian Power and Wheeling Power to make upgrades to all three plants.

"The Commission is very concerned about a likely shortage of electricity that shutting down the Mitchell plant prematurely would cause," PSC Chairman Charlotte Lane said in an Aug 4 statement. "We recognize that in the future, for new power supply resources, we may have to rely more on intermittent resources such as wind and solar. It is premature, however, to begin abandoning our traditional base load power supply resources, which can be upgraded to meet environmental requirements."

Phil Moyer, a spokesman for Appalachian Power, told West Virginia Public Broadcasting that the company's "next steps will be to evaluate our options in light of the conflicting Virginia and West Virginia state commission orders, determine the best path forward to meet the resource needs in each state, and return to the commissions if necessary for consideration of our updated costs and plans."

The public broadcasting outlet says it is unclear if the wastewater projects at all three plants can be completed with only West Virginia customers paying for the cost.

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Register-Herald Online, The

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"Here we go again": Residents, forest advocates oppose bid to reinstate mine permits near Kanawha State Forest

08/29/2021

Herald-Dispatch, The

Barney Frazier was flipping through the newspaper last month when he was jarred by a blast from the past.

He hadn't been hoping the blasts would stay there.

"Oh, goodness, it's just here we go again," Frazier said. "Here we are again."

Frazier, 72, of Charleston had come across a legal ad announcing that a Milton-based coal mining company that filed for bankruptcy in 2019 had applied to the West Virginia Department of Environmental Protection to reinstate three mining permits to another coal company.

The new permittee would be the same coal company that first proposed 17 years ago steep-slope mining between Rush Creek and its right fork in the shadow of Kanawha State Forest behind his home.

"It dredges up everything that we've been dealing with since 2004," Frazier said, sitting at a table near the front door of the red-brick Mount Alpha Road home into which he and his wife, Jackie, moved that year.

The Fraziers learned four months after moving in that Keystone Industries, LLC, a Florida-based coal company, planned to bore into coal seams and conduct blasting operations some 3,000 feet south of their new house.

So Frazier rallied his neighbors some of whom lived closer to the proposed mine than he did and lawmakers against the permit application. They got the Kanawha County Commission to oppose the application and then-U.S. Rep. Shelley Moore Capito, R-W.Va., and then-state Delegate Charles R. "Rusty" Webb, R-Kanawha, to write letters to the DEP expressing concern about the proposed mine site.

But the agency issued the permit for the Rush Creek No. 2 Mine to Keystone Industries in 2006, setting the stage for years of environmental violations and impacts on and around the Fraziers' home.

Blasting rattled their windows once or twice a week. Light from night mining grew brighter as operations moved nearer.

"It's just aggravating as can be," said Frazier, a retired attorney who worked as an underground coal miner for five years and was born and raised in Logan County.

In 2013, Keystone transferred the permit and two others for surface mines in the Rush Creek area to Revelation Energy, LLC, the Milton-based company and nation's sixth-largest coal producer that operated the mines until the permits were revoked in October 2020 15 months after the company and its affiliate Blackjewel LLC filed for Chapter 11 bankruptcy protection.

The other two mines for which Keystone transferred permits to Revelation were the nearby Rush Creek No. 1 and Keystone Development No. 1 after the DEP issued 40 violation notices to Keystone and owner Tom Scholl for sediment control and revegetation failures and exceeding water pollution limits.

Now Revelation is looking to reinstate and transfer the permits back to Keystone after both left the land scarred and the water impaired around the perimeter of Kanawha State Forest.

"I was just totally shocked," Frazier says. "I didn't see it coming."

So on a rainy August weekday afternoon, Frazier and three members of the volunteer Kanawha Forest Coalition consider what's driving them to fight the same coal company again. The group submitted monitoring data that led to a 2016 DEP order for Keystone permanently ending mining at the Keystone Development No. 2 mine permit.

Seated to Frazier's right, Chad Cordell remembered drinking from clear springs and eating wild blueberries from the hills around Rush Creek as a kid before leaving the state in 1997. When he came back in 2009, the hills had been blasted to rubble.

"There's got to be citizen eyes on the ground, and that takes a lot of time and a lot of energy," Cordell says. "It's daunting to get back into this."

The coalition has unsuccessfully urged the DEP to reject the companies' applications to renew their permits including Keystone's still active Keystone Development No. 2 permit and filed reports with the agency.

The failures have been many.

In a February 2014 water impact assessment intended to determine whether Keystone Development and the Rush Creek No. 2 mines were designed to prevent damage outside their permit areas, DEP geologist Forrest Jones concluded both were "expected to be environmentally successful" and contended he was "unaware of any outstanding environmental problems" in the area.

Jones cited a "general windshield tour" to assert the "existing mines have performed environmentally well," that "amply designed sediment control structures" would be "more than adequate" to protect against damaging amounts of sediment entering tributaries of Davis Creek. Proposed mining was designed to "consistently comply" with water quality standards.

"He was wrong on every single count," Cordell said.

State environmental regulators had already issued 16 violation notices for the Rush Creek No. 2 permit for sediment control failures, toxic mine drainage and exceeding air blast limits. Fifteen notices came while Keystone was still the permittee before its 2013 permit transfer to Revelation.

Fifty-four more notices have followed at the Rush Creek No. 2 for similar offenses and 72 at KD No. 2, including 15 for sediment control failures.

Permits for those mines and the neighboring Rush Creek No. 1 and KD No. 1 mines have been assessed a combined 177 notices by the DEP since the former was first issued in 2001 totaling \$188,697 in fines for Keystone and Revelation.

Rush Creek and its right fork and nearby Kanawha Fork were added to the state's list of impaired streams in 2016.

"They've essentially killed Rush Creek," Cordell says.

The DEP has two cases pending against Revelation and one against Keystone in Kanawha County Circuit Court for collection of past penalties incurred under state water pollution law.

"The agency issues mining permits based on faulty assumptions," Cordell said. "Then they routinely fail to document the resulting environmental damage."

Kanawha Forest Coalition members have regularly cited a lack of agency documentation of environmental issues near Kanawha State Forest in violation notices and inspection reports.

Coalition members are most concerned with two possibilities given what Cordell views as Keystone owner Tom Scholl's record of "noncompliance and shoddy work and taking shortcuts."

One is state environmental regulators reinstating Revelation's revoked permits for reclamation to Keystone Industries. To the coalition, the even worse possibility is the department allowing coal mining to resume on the permits.

The three permits under consideration for reinstatement are for the Rush Creek No. 1 and No. 2 and Keystone Development No. 1 mines.

Neither Scholl nor Revelation officials responded to requests for comment.

Asked whether the DEP would factor Keystone's history of environmental violations into its reinstatement decision, acting spokesman Terry Fletcher said the agency will evaluate "in accordance with all applicable regulations and statutes."

From Revelation to reclamation

Surety bonds secured to cover reclamation costs for the three permit sites up for reinstatement total more than \$3.9 million, Fletcher said Tuesday.

In a letter dated a day earlier, the federal Office of Surface Mining Reclamation and Enforcement told DEP Secretary Harold Ward the state has failed to take sufficient steps to ensure complete and accurate estimations of all outstanding reclamation obligations on active permits. The office required the state to submit within 60 days an amendment to its reclamation program.

The federal office two decades ago approved a DEP program amendment the creation of a reclamation fund advisory council and an increased special reclamation tax after threatening a partial takeover of the state's reclamation program over liability estimation concerns.

A report filed in June by the state Post Audit Division warned that state mine cleanup funds are nearing insolvency and the DEP has failed to comply with state and federal law in reclamation program oversight, resulting in missed opportunities to financially shore up a program that will need hundreds of millions of dollars to reclaim permit sites under federal regulations.

Liabilities for permits issued before July 2019 will total nearly \$500 million over the next 20 years, according to an actuary for the Special Reclamation Fund Advisory Council. The balance of special reclamation funds as of March 1 was about \$190 million, less than 40% of the projected 20-year liability.

“So once Revelation went bankrupt, though, then DEP is faced with the question, how's this ever going to get reclaimed?” said Kanawha Forest Coalition member Jim Waggy, of Kanawha City.

“If the state wants to keep it, then they're gonna spend their money,” Scholl said during a Wednesday visit to the permit sites by the coalition, DEP officials and Keystone representatives.

A 2019 state Post Audit Division report raised concern about First Surety Corporation's capacity to pay its surety bond obligations if operators fail to fulfill their obligations to reclaim mines, noting mining and reclamation sureties totaled \$47.8 million.

Fletcher declined to estimate reclamation costs for the three sites up for reinstatement, saying costs “remain subject to a large degree of uncertainty and refinement.”

Fletcher said Keystone has performed onsite reclamation work where it now seeks to be reinstated as permittee since Revelation filed for bankruptcy in 2019.

But the DEP has documented leaking sediment ditches and landslides at Rush Creek Mine No. 1 since then, and Cordell said minimal water treatment since 2019 has done little to reclaim the area.

Revelation had signed consent orders in 2017 agreeing to total land reclamation efforts on the three permits by June 30, 2018. Tree planting was to be completed within two growing seasons, but the DEP issued violation notices to Revelation in 2019 for failing to follow approved planting and revegetation plans on all three permits.

Three years later, coalition members said, they fear high outstanding reclamation costs will push Scholl toward seeking to resume coal operations.

“What is his incentive to take on potentially millions of dollars in reclamation water treatment liabilities?” Cordell said. “We don't know what his goals are. One of the concerns that we have is he may want to mine more coal off this complex, and this is a complex that has a track record from the very beginning of noncompliance, of water pollution, of absolute environmental destruction.”

“I want to clean it up,” Scholl said during Wednesday's site visit.

A DEP official told Cordell during the visit that Keystone must apply separately for mining approval if the permits are reinstated.

If Scholl did apply again, the odds would be in his favor.

The DEP has denied just 1.57% of mining permit applications it has received since the start of 2016, according to Fletcher. The agency has approved 7,035 mining permit applications during that span, Fletcher said.

Feeling frustration, not protection

Following a June 2016 flood that caused widespread devastation throughout the Kanawha Valley, an unstable berm on the Rush Creek No. 2 Mine permit gave out, took down a swath of trees and deposited mud that blocked Rush Creek Road.

“When it collapsed on this road here, people couldn’t get out for a while,” recalled Doug Wood, a coalition member and former water resources regulator who retired from the DEP in 2011.

After an April 2017 Rush Creek mine complex site visit, the coalition wrote a letter to the DEP observing a significant crack in the berm.

Another failure resulted in another debris and silt dump onto Rush Creek Road in July 2018, according to a citizen complaint filed with the DEP.

In the same letter, coalition members documented discovering an outlet at the Rush Creek No. 1 Mine no longer existed after a ditch washed out for a few hundred feet. Using aerial imagery from September 2015, the coalition showed the same section of ditch had been washed out for at least a year and a half.

A Gazette-Mail review of DEP inspection reports for the mine before the April 2017 site visit revealed no agency documentation of the outlet washout.

The DEP has issued violation notices and cessation orders for the Rush Creek mines stemming directly from citizen complaints filed by coalition members and residents reporting noncompliant water pollution outlet discharges and damages to Rush Creek Road.

But the agency has declined to issue violation notices in response to complaints reporting noncompliant discharges and noise disturbance.

“It’s absurd that residents of the state have to do the job of the regulatory agencies for them,” Cordell says. “That’s really where we’re at.”

While still a DEP employee, Wood concluded in a June 2010 letter to the agency that an existing, permitted Keystone coal quarry discharge into Kanawha Fork was the sole source of the stream’s degraded water chemistry “six years before the waterway was added to the state’s list of impaired streams.

Three years later, Wood wrote to the DEP on behalf of the volunteer Kanawha State Forest Foundation, observing Keystone and Revelation mining operations had caused severe damage to Kanawha Fork’s ecosystem, wiping out mayfly and stonefly populations. Wood called on the agency to penalize the area’s mine operators for water quality standard violations.

“It’s particularly frustrating for me because I know what the DMR [Division of Mining and Reclamation] inspectors and the staff up above them should be doing,” Wood said.

Wood contended the DEP’s Division of Mining and Reclamation underemphasizes tracking sources of pollution, starting downstream and working upstream. Wood accused the division of having a “culture of off-site damage ignorance” for decades.

Cordell called the DEP a “captured agency” hemmed in from the top by industry-friendly political considerations starting with West Virginia’s coal magnate governor and prolific environmental law violator, Jim Justice. Wood agreed.

“It is a telling thing that all this mess we’re describing to you here occurs basically a five-to-10-minute drive away from DEP headquarters,” Waggy said.

Not home anymore

Daile Rois’s 85-year-old father-in-law decided to move three hours away to escape the mess.

“He shocked us when he did that,” said Rois, 60, who now takes care of her father-in-law with her disabled veteran wife in Dayton, Ohio. “He left his church. He left his friends.”

Rois’s father-in-law, Fred Thomas, had lived on Middlelick Branch, a byway curling off Range Road next to Kanawha Fork, since 1963.

It was a place he still embraced as home after his wife died, and Rois and her wife left Dayton to move in with him in December 2012 to take care of him upon his request.

But the three of them moved back to Dayton in 2018 from their Middlelick Branch abode 2,000 feet away from the Keystone Development No. 2 Mine.

After the DEP approved the mine’s permit in 2014, the family harbored constant concern over their water quality, decreased property value and increased flooding.

Rois said she couldn’t trust the DEP, which she said she had to push hard to conduct water quality testing and check for violations.

“Everything gets put on the citizenry to prove, to document, to advocate,” Rois said. “Most people won’t do it. Most people are either afraid of the coal company or know that it winds up being nearly a full-time job.”

Rois credited the Kanawha Forest and the Ohio Valley Environmental coalitions for giving her the information she needed to be an environmental advocate for her family, prompting her to volunteer with conservationist groups. She tried to reassure her father-in-law, but she gleaned a lesson from her only six years living in West Virginia that still distresses her.

“That was probably the most heartbreaking thing for me, was discovering there was no one that stood for the citizens,” Rois remembered.

Bracing for a familiar future

Back in Barney Frazier’s home, Kanawha Forest Coalition members said they are out of appealing options for the three permits up for reinstatement “either the DEP manages onsite reclamation or Keystone takes over.

“At least with the DEP, they have a clear obligation to reclaim the site and not to do more damage by attempting to mine it more, and we can hold them accountable if they fail to meet those obligations,” Cordell said. “We can bring lawsuits against the DEP to compel them to treat the water, to complete the reclamation.”

Frazier said he wants more to show for the legwork he began 17 years ago.

With Frazier’s eyebrows lowered in concentration at his table as he jots down notes, the adjectives he used when recalling his reaction to last month’s fateful legal ad, shocked, dumbfounded, overwhelmed no longer apply.

But they crept back when Frazier acknowledged his fear that more water quality violations than reclamation will occur if the DEP approves any reinstatement for Keystone.

“I don’t want to have to deal with this again,” he sighed.

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